

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 200

ORDER OF RAILWAY CONDUCTORS OF AMERICA,
H. W. FRASER, AS PRESIDENT OF THE ORDER
OF RAILWAY CONDUCTORS OF AMERICA, ETC.,
ET AL., PETITIONERS,

VS.
THE PENNSYLVANIA RAILROAD COMPANY, AND
BROTHERHOOD OF RAILROAD TRAINMEN

AN WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JUNE 26, 1944

CERTIORARI GRANTED OCTOBER 9, 1944

APPENDIX TO APPELLANTS BRIEF
IN THE
UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1943

No. 8571

ORDER OF RAILWAY CONDUCTORS OF AMERICA;
H. W. FRASER as President of the Order of Railway
Conductors of America, Room 312, 10 Independence
Avenue, S. W., Washington, D. C.; B. C. JOHNSON as
Vice President of the Order of Railway Conductors of
America, Room 312, 10 Independence Avenue, S. W.,
Washington, D. C., *et al*, Appellants,

v.

NATIONAL MEDIATION BOARD, GEORGE A. COOK, WIL-
LIAM H. LEISERSON and E. H. SCHWARTZ, indi-
vidually and as members of the National Mediation Board,
18th and F Sts., N. W., Washington, D. C., *et al*,
Appellees.

Appeal from the District Court of the United States for the
District of Columbia

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IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

**ORDER OF RAILWAY CONDUCTORS
OF AMERICA;**

H. W. FRASER as President of the Order of Railway Conductors of America, Room 312, 10 Independence Avenue, S. W., Washington, D. C.; **B. C. JOHNSON** as Vice President of the Order of Railway Conductors of America, Room 312, 10 Independence Avenue, S. W., Washington, D. C.; **E. E. KALKMAN** as General Chairman of the General Committee of Adjustment of the Order of Railway Conductors of America on The Pennsylvania Railroad for the Lines West, Room 312, 10 Independence Avenue, S. W., Washington, D. C.; and **J. E. MAGILL** as General Chairman of the General Committee of Adjustment of the Order of Railway Conductors of America on the Pennsylvania Railroad for the Lines East, Room 312, 10 Independence Avenue, S. W., Washington, D. C., *Plaintiffs,*

Civil Action
No. 17,899

vs.

NATIONAL MEDIATION BOARD,
GEORGE A. COOK and **DAVID J. LEWIS** individually and as members of the National Mediation Board, 18th and F Streets, N. W., Washington, D. C.; **PENNSYLVANIA RAILROAD COMPANY,** 626 14th Street, N. W., Washington, D. C.; **BALTIMORE AND EASTERN RAILROAD COMPANY,** 626 14th Street, N. W., Washington, D. C.; and **BROTHERHOOD OF RAILROAD TRAINMEN,** Room 400, 10 Independence Avenue, S. W., Washington, D. C.,
Defendants.

**AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
COUNT I**

Come now the plaintiffs in the above-entitled case and, for cause of action, respectfully state as follows:

1. That the plaintiff, Order of Railway Conductors of America (hereinafter sometimes referred to as "ORC"), is a voluntary unincorporated association, having its headquarters and general offices at Cedar Rapids, Iowa; that its membership consists of many thousands of railroad conductors throughout the United States and Canada; that it has a written constitution and statutes, a representative form of government, is not organized for profit, and is a railway labor union, national in scope.

2. That the plaintiff, H. W. Fraser, is a member and President of said ORC, and a resident of Cedar Rapids, Iowa; that the plaintiff, B. C. Johnson, is a member and Vice President of said ORC, and a resident of Grand Rapids, Michigan; that the plaintiff, C. E. Kalkman, is a member of said ORC, is the General Chairman of the General Committee of Adjustment of the ORC on the Pennsylvania Railroad for the lines of said railroad west of Pittsburgh, Erie, and Buffalo (those lines being sometimes hereinafter referred to as "Lines West"), and is a resident of Canton, Ohio; that the Plaintiff, J. E. Magill, is a member of said ORC, is General Chairman of the General Committee of Adjustment of the ORC on the Pennsylvania Railroad for the lines east of Pittsburgh, Erie, and Buffalo (those lines being sometimes hereinafter referred to as "Lines East"), and is a resident of Philadelphia, Pennsylvania.

3. That upon the Pennsylvania Railroad, both Lines East and Lines West, there are located, usually at division points on said railroad, what are known as local

divisions of the ORC; that each local division having members who are employees of the Pennsylvania Railroad elects a Local Committee of Adjustment, and a Local Chairman thereof.

That under the constitution and statutes of the ORC, the Local Chairmen of the various Local Committees of Adjustment on the Lines West constitute the membership of what is known as the General Committee of Adjustment, which said General Committee of Adjustment, in turn, has a General Chairman; who, as above alleged, for the Lines West is the said C. E. Kalkman.

That the Local Chairman of the various Local Committees of Adjustment on the Lines East on the Pennsylvania Railroad, under the constitution and statutes of the ORC, constitute the General Committee of Adjustment of the ORC on the Lines East, which has a General Chairman, who, as above alleged, is the said J. E. Magill.

That the railroad conductors on the Baltimore and Eastern Railroad are represented by the General Chairman of the General Committee of Adjustment for the Lines East.

4. That the defendant, Pennsylvania Railroad Company (sometimes hereinafter referred to as the "Penn RR") is a corporate common carrier within the provisions of the Railway Labor Act, and is a corporation, incorporated under the laws of the State of Pennsylvania, and having its principal office in Philadelphia, Pennsylvania, and that it operates a line of railway as a common carrier within the District of Columbia.

5. That the Baltimore and Eastern Railroad Company (sometimes hereinafter referred to as the "B&E RR") is a corporate common carrier within the provisions of the Railway Labor Act, and is a corporation, incorporated under the laws of the State of Maryland, and having its principal office in Philadelphia, Pennsylvania; that said B&E RR is a wholly-owned sub-

subsidiary of the said Penn RR, and the operation of said B&E RR is under the general management and supervision of said Penn RR.

6. That the defendant, Brotherhood of Railroad Trainmen (sometimes hereinafter referred to as the "BRT"), is a voluntary unincorporated association, having its principal office in the City of Cleveland, Ohio; that it is a labor organization, national in scope, and its membership is composed of many thousands of employees of various railroads throughout the United States and Canada.

7. That the defendant, National Mediation Board (sometimes hereinafter referred to as the "Board"), is an independent agency in the executive branch of the United States Government created by Public Law No. 442, 73rd Congress (45 U.S.C.A., 151 *et seq.*), commonly known as the "Railway Labor Act," of whose seal this Court under the terms of said Act takes notice, with its principal office in the District of Columbia.

8. That the defendant, George A. Cook, is a citizen of the United States, a resident of the District of Columbia, and a member and Chairman of the said Board, and is sued herein as a member of said Board.

9. That the defendant, David J. Lewis, is a citizen of the United States, a resident of the District of Columbia, and a member of the Board, and is sued herein as a member of said Board.

10. That this is a suit of a civil nature which arises under the Constitution and laws of the United States, whereof this Court has original jurisdiction, and particularly under the Act of Congress of May 20, 1926, known as the Railway Labor Act (44 Stat. 577), as amended June 21, 1934, by Public Act No. 442 of the 73rd Congress of the United States, and is a suit for a declaratory judgment under the provisions of the Act of Congress pursuant to the Federal Declaratory Judgment Act (U.S.C. Title 28, Par. 400; 48 Stat. 955), and

the laws relating to interstate commerce, and is instituted pursuant to the provisions of said Railway Labor Act, as amended, and the laws of the United States relating to interstate commerce, and also under the general-equity jurisdiction of this Court.

11. That at this time, and for many years last past, the ORC is and has been the duly accredited and recognized representative and bargaining agent for the class and craft of road conductors on the Penn RR, numbering in excess of one thousand; that the said BRT is the duly accredited and recognized representative and bargaining agent for the class and craft of road brakemen on the Penn RR, as well as for the class and craft of yard conductors, yard brakemen, baggagemen, and switchtenders, numbering in excess of one thousand; that the work of the two classes and crafts, i.e., road conductors and road brakemen, being closely related, the ORC and the BRT on occasions have jointly negotiated contracts or schedules with railroad common carriers with regard to rates of pay, rules, and working conditions; that such a joint schedule was negotiated jointly by the ORC and the BRT with the Penn RR, to be and become effective April 1, 1927, a true and correct copy of said joint schedule being attached hereto, made a part hereof, and marked Exhibit "A"; that said schedule, Exhibit "A" other than as to the rates of pay therein set forth, is still in full force and effect insofar as the ORC, and the class and craft of road conductors, and the defendant, Penn RR, are concerned.

12. That on April 18, 1941, the Penn RR served a notice upon the ORC and the BRT, as the respective recognized representatives of the class and craft of road conductors and road brakemen, of the desire of the management to change certain regulations in said schedule, Exhibit "A", said notice being in compliance with the Railway Labor Act; that thereafter the General Chairmen of the General Committees of Adjust-

ment of the ORC for the Lines West and the Lines East on said Penn RR, jointly met with H. F. Sites, General Chairman of the BRT for the Lines East, and U. D. Hartman, General Chairman of the BRT for the Lines West, and said representatives jointly agreed to enter upon joint negotiations with the said Penn RR to negotiate revised rules and working conditions as theretofore with regard to the two classes and crafts of railway employees, i.e., road conductors and road brakemen; that thereafter joint conferences by said General Chairmen were held with C. E. Musser, H. A. Enochs, Luther Long, I. O. Enders, W. C. Pitman, and other agents and officials of the defendant railroads; that said joint conferences commenced on or about May, 1941, but shortly thereafter were held in abeyance by consent of all concerned until on or about December 5, 1941, when steps were taken to renew the joint conferences; that thereafter the first of such conferences with the representatives of the defendant railroads was held on July 15, 1942.

13. That due to the Lease-Lend Program and the emergency then existing, there had developed a great increase in passenger traffic upon the Penn RR, and passenger trains to accommodate said traffic were composed of so many passenger cars that it became impossible for a single conductor to collect the tickets and fares and perform his duties, and the representatives of the craft of road conductors, to wit, the ORC, had negotiated with the Penn RR for the placing of an additional conductor or conductors upon such heavy passenger trains, and, early in the fall of 1941, as a result of said negotiations, additional road conductors had been placed upon a number of such trains operated by the Penn RR, at conductors' pay.

14. That on or about July 24, 1942, in the joint negotiations with the management of the Penn RR, the said BRT asserted and demanded the right to intrude and

infringe upon the jurisdictional right of the ORC as the representative under the provisions of the Railway Labor Act of the class and craft of road conductors by legislating for the performance of conductors' work on heavy passenger trains, and by legislating and dictating the circumstances under which a Conductors' Extra Board would be maintained, by fixing the number of men that should compose the same; that the representatives of the Penn RR concurred in the position of the BRT; that because of said demands of the BRT, and the acquiescence therein by the Penn RR, the said ORC withdrew from said joint negotiations, and served written notice of its withdrawal on the Penn RR on August 3, 1942, a true and correct copy of which is attached hereto, made a part hereof, and marked Exhibit "B"; that at the same time, the protest of the representative of the class and craft of road conductors with reference to said infringement and encroachment sought to be made upon its right to bargain for the class and craft of road conductors was set forth in a letter served upon the management of the Penn RR, a true and correct copy of which is attached hereto, made a part hereof, and marked Exhibit "C".

15. That on or about August 17, 1942, the said BRT and the Penn RR signed and executed a separate schedule or agreement, incorporating provisions encroaching upon and invading the right of the representative of the class and craft of road conductors with regard to the matters hereinafter set forth, a true and correct copy of said schedule being attached hereto, made a part hereof, and marked Exhibit "D"; that paragraph P-A-1 of said schedule, Exhibit "D", reading as follows:

"P-A-1. Rates for passenger service shall be as follows:

* * * * *

(See page 16, Exhibit "D")

"On passenger trains on which, in the judgment

of the proper officer of the Company, the conductor requires assistance in the collection of tickets and fares, the proper officer of the Company shall designate such number of assistant conductors or ticket collectors as in the judgment of such officer may be necessary to assist the conductor in the collection of the tickets and fares. The assistant conductors or ticket collectors so designated shall, in addition to collecting tickets and fares, perform the work of brakemen or baggagemen as members of the crew and they shall be paid for their entire tour of duty at the applicable rate provided above for assistant conductors or ticket collectors. When qualified assistant conductors or ticket collectors are not available at the time and place when a need for assistance arises, one or more brakemen or baggagemen who have not qualified as assistant conductors or ticket collectors may be designated to assist in the collection of tickets and fares. Brakemen or baggagemen so designated shall be paid for their entire tour of duty at the applicable rate provided above for assistant conductors or ticket collectors, and such payment shall not serve as the basis for any runaround payment or payments to any assistant conductor or ticket collector.

"When, in the judgment of the proper officer of the Company, the conductor does not require the assistance of some or all of the assistant conductors or ticket collectors who have been assigned to assist him in accordance with the preceding paragraph of this rule (P-A-1), the assistant conductor or ticket collector assignments which are not required may be abolished." (pp. 16 and 17 of Exhibit "D".)

is void and in violation of the Railway Labor Act, Section 2, First, Second, Third, Fourth, Seventh, and Ninth thereof, to the extent that the same purports and attempts to provide, by a collective bargaining contract

with the BRT, not the duly accredited representative of the class and craft of road conductors on the Penn RR, for the performance of road conductors' work, and, to said extent, constitutes and is an unlawful and illegal infringement upon the exclusive right of the ORC, and its representatives, as the accredited bargaining agent of the class and craft of road conductors, to represent said class and craft in collective bargaining.

16. That simultaneously, and as a part of said written agreement, Exhibit "D", and in connection with the provisions of P-A-1, it was orally agreed by and between the said BRT and the Penn RR that men allegedly working as so-called assistant conductors would qualify by examination, furnish surety bond, be equipped with ticket punches, cash fare receipts, tariffs, and cash reports, and be responsible to the Auditing Department, and do and perform all of the work of a regular road conductor on certain passenger cars on the heavy passenger trains wherein one regular road conductor, because of the heavy traffic, could not perform all of the conductor's duties, and that on September 12, 1942, said Penn RR, in conformity with said understanding and agreement, published certain rules and regulations, a true and correct copy of which is attached hereto, made a part hereof, and marked Exhibit "E".

17. That paragraphs 5-N-5 and 5-N-6 of said schedule, Exhibit "D", reading as follows:

"5-N-5. (a) On seniority districts on which extra road conductor lists are maintained, when the number of road conductors on such a list is reduced, the road conductors displaced as a result thereof, may displace any brakemen, baggagemen, or assistant conductors or ticket collectors whom their seniority entitles them to displace, subject to the provision of Rules 2-C-2 and 2-C-3, provided that:

(1) In the case of road conductors, other than extra passenger conductors, on the extra road conductor list, such conductors are earning an average of less than 2600 miles per month when the list is reduced;

(2) In the case of extra passenger conductors on the extra road conductor list, such conductors are earning an average of less than 4500 miles per month when the list is reduced.

(b) Road conductors reduced to brakemen, baggagemen, or assistant conductors or ticket collectors, in accordance with the foregoing provisions of this rule (5-N-5), shall not be permitted to remain as brakemen, baggagemen, or assistant conductors or ticket collectors when extra road conductors, other than extra passenger conductors, earn an average of 3200 miles per month and extra passenger conductors earn an average of 5500 miles per month, provided the return of such men to the road conductor extra list would not reduce the average earnings of the list below 2600 miles per month where the list is other than an extra passenger conductor list and below 4500 miles per month where the list is an extra passenger conductor list. On seniority districts where an agreement such as is provided for in Rule 2-C-1 (b) is in effect, and some of the road conductors who previously had been reduced under the circumstances set forth above elect to remain in a position of brakeman, baggageman, or assistant conductor or ticket collector, a number of junior road conductors working as brakemen, baggagemen, or assistant conductors or ticket collectors in the seniority district equal to the number of road conductors so electing shall not be permitted to work as brakemen, baggagemen, or assistant conductors or ticket collectors.

(c) Management shall keep a record of the earning of extra road conductors on extra road conductor

lists and a copy of such statement of earnings shall be furnished interested local chairmen of the Organization signatory hereto."

"5-N-6. (a) When a conductor vacancy occurs at a time when regular or extra conductors are not available, the manner of calling qualified conductors who are working as brakemen, baggagemen, or assistant conductors or ticket collectors for use as conductors shall be as agreed to, in writing, between the Superintendent and the interested Local Committee or Committees of the Organization signatory hereto.

(b) The agreement referred to in paragraph (a) of this rule (5-N-6) shall clearly set forth the manner in which qualified conductors working as brakemen, baggagemen, or assistant conductors or ticket collectors shall be called to perform work as conductors." (pp. 106 and 107 of Exhibit "D".)

are void and in violation of the Railway Labor Act, particularly Section 2, First, Second, Third, Fourth, Seventh, and Ninth thereof, to the extent that said provisions seek or purport to provide under what conditions and under what circumstances a road brakeman, baggageman, or alleged assistant conductor or ticket collector, working as such, will enter the ranks of the class and craft of a road conductor and engage in the work of a road conductor, and to said extent said provisions constitute an unlawful and illegal infringement upon the exclusive right of the ORC, and its representatives, as the duly accredited representative and bargaining agent of the class and craft of road conductors, to represent in collective bargaining the class and craft of road conductors.

18. That at the time of the signing and making of said agreement, Exhibit "D", and ever since said time, and at the present time, the schedule and agreement hereinbefore referred to and identified as Exhibit "A",

insofar as the Penn RR and the class and craft of conductors were concerned, was and still is in full force and effect, and that under Regulation 5-F-1 thereof, reading as follows:

"5-F-1. When there is sufficient extra road service to justify the establishment of a regular extra conductors' list, such list may be established, if mutually agreeable to the division officers and the local committees."

and control of "such list", known as the Conductors' Extra Board, was recognized not only by the Penn RR, but by the General Chairman of the BRT and the Local Chairmen of the BRT, as being controlled and governed by the ORC, by and through its General Chairmen and its Local Chairmen of the Local Committees of Adjustment located, as hereinbefore alleged, along the lines of the Penn RR at division points.

19. That said Penn RR, since August 14, 1942, has failed and refused, and continues to refuse, to negotiate or bargain with the ORC, and its representatives, as the duly accredited representative under the provisions of the Railway Labor Act for the class and craft of road conductors, with regard to the performance of conductors' work on the heavy passenger trains and the Conductors' Extra Board, and has asserted and still asserts that said matters are concluded by reason of the agreement negotiated with the said BRT; that Penn RR is, by reason thereof, violating the provisions of the Railway Labor Act, and is denying to the plaintiffs the rights and privileges conferred upon them by the provisions of the Railway Labor Act to bargain collectively for the class and craft of road conductors; that plaintiffs have no plain, speedy, and adequate remedy at law, and unless said provisions of said agreement, Exhibit "D", and the oral agreement hereinbefore referred to,

constituting an unlawful and illegal infringement upon the right of the plaintiffs to represent the class and craft, are declared void, and unless a permanent injunction issue enjoining the defendant from continuing in effect said illegal and unlawful agreements, and said Penn RR is ordered and directed to negotiate solely and alone with the accredited representative of the class and craft of road conductors, plaintiffs, and the class and craft of road conductors which said ORC represents, will suffer irreparable injury and damage, for which they will have no redress.

COUNT II

For a second claim, plaintiffs respectfully show to this Court and allege:

20. That plaintiffs repeat and re-allege each and every allegation mentioned and contained in paragraphs numbered 1 to, 19, both inclusive, of this complaint.

21. That following the temporary suspension of the joint negotiations for the revision of certain rules and working conditions in May, 1941, and the resumption of said negotiations on or about December 5, 1941, by reason of the then-existing emergency there was a further increase in railroad traffic on the Penn RR, which was given further impetus and increase by the entry of the United States of America into the war on December 7, 1941.

22. That the order of promotion on the Penn RR is from road brakeman to road conductor; and that, as a result of said emergency and the great increase in railroad traffic, a large and substantial number of men who had prior to said emergency, and in normal times, been working as road brakemen entered into and upon active service as road conductors.

23. That the General Chairmen of the ORC and the General Chairmen of the BRT engaged in conferences

between themselves during the course of the negotiations with the Penn RR, and the representatives of the BRT in said conferences assured and represented to the ORC that there was no desire upon their part to infringe upon the jurisdictional right of the ORC to negotiate for the class and craft of road conductors; that, acting on such assurances, said General Chairmen for the ORC joined with the General Chairmen of the BRT in preparing proposals concerning working conditions for counter-submission to said Penn RR, which rules were submitted to the Penn RR on or about April 9, 1942.

24. That during July, 1942, the BRT filed before the First Division of the National Railway Adjustment Board certain time claims in large and substantial amounts, asserting that certain road brakemen who had assisted road conductors in the taking of tickets from passengers were entitled to be compensated at the rate of pay of "assistant conductors or ticket collectors", rather than the rate of pay as road brakemen, which claims were resisted and denied by the Penn RR until the consummation of the unlawful plan hereinafter described.

25. That said Penn RR and BRT conspired and confederated in an unlawful plan of action or program designed to embarrass, discredit, and weaken the ORC and to assist and strengthen the BRT and thereby to influence, coerce, and interfere with the class and craft of road conductors in their choice of a collective bargaining representative.

26. That said Penn RR, in pursuance of said unlawful plan, while purporting to conduct joint negotiations, made a private and secret agreement with the BRT to carve out of the road conductors' work a purported new class or craft of "assistant conductors"; that, by private and secret agreement, the Penn RR also negotiated with the BRT with regard to the manning, creation,

and control of a conductors' extra board; and that such action was a clear invasion of the jurisdictional province and representative rights of the ORC as the lawful bargaining agent of the class and craft of conductors, and was done for the purpose of strengthening the BRT and weakening and embarrassing the ORC in their respective standings with the class and craft of conductors.

27. That the said unlawful agreements with respect to the creation of the class and craft of so-called assistant conductors and the establishment and control of a conductors' extra board were incorporated in the BRT schedule (see Exhibit "D", pars. P-A-1 and 5-N-5 and 5-N-6 at pp. 106-107), and the Penn RR caused such schedule to be rushed to publication and circulation among the class and craft of road conductors.

28. That the Penn RR, in an effort to promote good will toward the BRT and weaken and discredit the ORC, sought to bring about a settlement of all claims filed by the BRT before the First Division of the National Railway Adjustment Board, and published and gave wide circulation, along with the BRT, of its proposed settlement, a true and correct copy of same being attached hereto, made a part hereof, and marked Exhibit "F".

29. That said Penn RR has engaged in dilatory tactics, has failed and refused to bargain and negotiate in good faith with the ORC; that no conferences were held with plaintiffs from and after July 24, 1942, (other than to deliver instruments marked Exhibits "B" and "C"), until August 27, 1942; that the Penn RR is intentionally delaying negotiations with the ORC to grant the BRT an opportunity to invoke the services of the Board under the provisions of the Railway Labor Act for a certification to represent the class or craft of road conductors and to obtain an election in such class or craft at a time when the working conditions of the

conductors are in a state of uncertainty; and that the unlawful failure and refusal of the Penn RR to bargain and negotiate is embarrassing the ORC with its members.

30. That said Penn RR in conferences commencing August 27, 1942, and particularly on September 4, 1942, sought to coerce plaintiffs into the acceptance of rules and working conditions not satisfactory to it by directing attention to the failure of the ORC and the management to conclude an agreement between themselves, by referring to the proposed settlement of claims filed by the BRT before the National Railway Adjustment Board, by threats that the BRT was going to secure the right of representation of road conductors through the invocation of mediation, by stating that the management would not change its position irrespective of further negotiation or mediation with respect to said rules P-A-1 and 5-N-5 and 5-N-6 of the BRT schedule, and by expressing the management's dissatisfaction and disapproval with the participation in said negotiations of one B. C. Johnson, a vice-president of ORC and one of the plaintiffs in this case, because he was not an employee of the said Penn RR.

31. That said BRT, while representing to the ORC that it had no intention or desire to invade the jurisdiction of said ORC, was secretly soliciting authorization cards to represent the class or craft of conductors and that it has conspired and confederated with the Penn RR in all the acts aforesaid.

32. That said BRT has caused to be circulated among the class and craft of road conductors a statement that said Penn RR will not conclude any negotiations with the ORC or revise rules and working conditions pursuant to its demand and request therefor, on April 18, 1941.

33. That the Penn RR agreed to the said unlawful plan of action or program to obtain a substantial finan-

cial advantage through the use of so-called "assistant conductors" to do conductors' work at less than conductors' pay, and to secure a commitment from the BRT to adjust time claims of road brakemen, pending before the First Division of the National Railway Adjustment Board, at greatly reduced amounts.

34. That on or about September 23, 1942, the said BRT did file, as plaintiffs are informed and believe, with the Board, an invocation to be certified as the duly accredited representative of the class and craft of road conductors, and to displace and oust the ORC as such representative, and that said National Mediation Board has accepted jurisdiction of said request for its services.

COUNT III

For a third claim, plaintiffs next show to this Court and allege:

35. That plaintiffs repeat and re-allege each and every allegation mentioned and contained in paragraphs numbered 1 to 34, both inclusive, of this complaint.

36. That plaintiffs, on or about October 28, 1942, filed with the Board a protest against the holding of an election "at this time" among the craft or class of road conductors of the Penn RR, a true and correct copy of which is attached hereto, made a part hereof, and marked Exhibit "G".

37. That the said protest of the plaintiffs charged that the Penn RR was interfering with, influencing and coercing the said conductors in their choice of a bargaining representative by unlawfully bargaining with the BRT with respect to working conditions of the craft or class of road conductors, by infringing upon the jurisdiction of the ORC, by breaching an existing contract between the Penn RR and ORC, by delaying and refusing to bargain with the ORC as the bona fide representative of the craft or class of road conductors,

by publicizing its displeasure with the ORC organization and its firm intention to deprive the ORC of its jurisdiction as the lawful bargaining representative of the craft or class of road conductors, and by aiding the BRT in publishing all such information amongst the craft or class of road conductors.

38. That said protest of the plaintiffs also requested that the Board grant the ORC an opportunity to be heard on such charges; and that such request for a hearing was again urged orally by representatives of the ORC at a conference with Mr. David J. Lewis, member of the National Mediation Board, and Mr. Robert F. Cole, Secretary of the National Mediation Board, on or about November 12, 1942.

39. That, notwithstanding the said charges of carrier interference, plaintiffs' request to be heard and to present evidence in connection therewith was denied by the Board in a letter dated November 9, 1942, a true and correct copy of which is attached hereto, made a part hereof, and marked Exhibit "H".

40. That the Board ruled that it had "no jurisdiction" or "power" to consider the charges of the ORC under authority granted it by the Railway Labor Act; that the provisions of Section 2, Ninth, which require the Board "to insure the choice of representatives by the employees without interference, influence, and coercion by the carrier," limited the power of the Board with respect to carrier interference to that occurring at the time of taking a secret ballot and in a prescribed geographical area; and that pursuing this unreasonable and illegal construction of Section 2, Ninth, of the Railway Labor Act, the Board held no hearing or investigation to determine whether the said charges of interference were true.

41. That the Board had jurisdiction and the duty and obligation under the Railway Labor Act to determine whether or not the unfair labor practices and vio-

lation of the Railway Labor Act charged against the Penn RR were true and would interfere with, influence or coerce the craft or class of road conductors in their choice of a bargaining representative; and that the Board had the further duty and obligation if it found that such unfair labor practices would interfere with; influence and coerce the said craft or class of road conductors in their choice of a bargaining representative to postpone the holding of an election until such time as the Board should determine that such unlawful interference, influence and coercion had ceased.

42. That the Board acted wrongfully and illegally in refusing to take jurisdiction and consider said charges and insure the choice of a bargaining representative for the craft or class of road conductors without interference, influence or coercion.

43. That on or about December 2, 1942, the Board purported to order an election on the Penn RR to determine the bargaining representative for the craft or class of road conductors thereon; that a count of the ballots by the representatives of the Board purports to show that the BRT received a majority of the votes cast at such election; that on December 27, 1942, the Board purported to issue, as a result of such election, a certification that the BRT was the designated and authorized representative of the craft or class of road conductors on the Penn RR.

44. That the said election and the said certification are illegal, invalid, and null and void for the reasons, amongst others, that the Board failed and refused to perform its duties and determine whether the unfair labor practices charged to the Penn RR would interfere with, influence or coerce the craft or class of road conductors in their choice of a bargaining representative at such election, and because the unfair labor practices complained of did constitute in fact an unlawful interference, influence and coercion by the Penn RR

with the choice of a bargaining representative by the craft or class of road conductors thereon at such election.

45. That plaintiffs have no adequate remedy at law, that, unless it be adjudged and decreed that said election and certification are of no force and effect and a nullity and such other relief granted as hereinafter prayed for, plaintiffs will suffer irreparable damage, loss, and injury.

WHEREFORE, plaintiffs demand judgment against the defendants:

(1) That said election held from December 5, to December 19, 1942, and the said certification issued December 27, 1942, by the National Mediation Board, certifying "that the Brotherhood of Railroad Trainmen has been duly designated and authorized to represent the craft or class of road conductors, employed by the Pennsylvania Railroad Company, for the purposes of the Railway Labor Act" be annulled, vacated and set aside.

(2) (a) That the National Mediation Board, George A. Cook, and David J. Lewis and each of them and their agents, officers and employees be restrained and enjoined from holding an election or utilizing any other method of ascertaining the bargaining representative for the craft or class of road conductors on the Penn RR until it has considered the unfair labor practices complained of and until it finds and determines after investigation and hearing, that they do not constitute an interference, influence or coercion by the Penn RR of the craft or class of road conductors in their choice of a bargaining representative:

(b) That in the alternative the Court declare that the practices complained of against the Penn RR constitute unlawful interference, influence or coercion by the Penn RR of the craft or class of road conductors in their choice of a bargaining representative; and restrain and enjoin the National Mediation Board, George

A. Cook, and David J. Lewis and each of them and their agents, officers, and employees from holding an election or utilizing any other method of ascertaining the bargaining representative of the craft or class of road conductors on the Penn RR until said Board finds and determines after investigation and hearing that such interference, influence or coercion has ceased.

(3) That it be declared and adjudged that paragraph P-A-1 of said schedule, Exhibit "D" and the oral agreement between defendants made in connection therewith, are void and of no force and effect, and in violation of the Railway Labor Act, Section 2, First, Second, Third, Fourth, Seventh, and Ninth thereto, to the extent that the same purports and attempts to provide, by a collective bargaining contract made between defendants, for the performance of work of the class and craft of road conductors, as being an alleged and purported agreement for the class and craft of road conductors not negotiated with the duly accredited representative of the class and craft of road conductors, and to which the ORC, the duly accredited representative of the class and craft, was not a party.

(4) That paragraphs 5-N-5 and 5-N-6 of said schedule, Exhibit "D", be declared and adjudged void and in violation of the Railway Labor Act, particularly Section 2, First, Second, Third, Fourth, Seventh, and Ninth thereof, to the extent that said provisions seek or purport to provide under what conditions and under what circumstances a road brakeman, baggageman, or alleged assistant conductor or ticket collector, working as such, will enter the ranks and class and craft of road conductors, and engage in and perform the work of road conductors, and that said provisions to said extent constitute an unlawful and illegal infringement upon the exclusive right of the plaintiffs, and the ORC as the accredited bargaining agent of the class and craft of

road conductors, to represent said class and craft in collective bargaining.

(5) That it be declared and adjudged that the ORC, as the accredited representative of the class and craft of road conductors, has the exclusive right to negotiate in collective bargaining with respect to all working conditions for said class and craft of employees on said railroad companies.

(6) That said Penn RR and said B&E RR be permanently enjoined from negotiating, bargaining with, and making or maintaining agreements with the said BRT, or any union other than the ORC, with regard to the class and craft of road conductors or the work of such class or craft, so long as said ORC is the accredited representative of the class and craft of road conductors.

(7) That the defendants Penn RR and B&E RR be ordered and directed to negotiate and bargain with the ORC in accordance with the Railway Labor Act as to all working conditions of the class and craft of road conductors so long as the ORC is the accredited representative of such class and craft.

(8) That the defendants Penn RR and B&E RR be permanently enjoined from directly or indirectly coercing, influencing, or interfering with the class and craft of road conductors in their choice of a representative under the provisions of the Railway Labor Act.

(9) That the plaintiffs have such other and further relief as may to the Court be deemed just and equitable in the premises.

(Signed) RUFUS G. POOLE,

Rufus G. Poole,
815 Fifteenth Street, Northwest,
Washington, D. C.

(Signed) V. C. SHUTTLEWORTH,

V. C. Shuttleworth,
1143 Merchants Bank Building,
Cedar Rapids, Iowa

Attorneys for Plaintiff.

EXHIBIT "G"

ORDER OF RAILWAY CONDUCTORS
OF AMERICA

C O P Y

Cedar Rapids, Iowa
Oct. 28, 1942

Mr. Robert F. Cole, Secretary
National Mediation Board,
Washington, D. C.

Dear Mr. Cole:

Reference is made to your file Case R-972.

In our letter to you September 28, 1942, we advised you of our desire to file a resistance to the invocation of your Board's services by the Brotherhood of Railroad Trainmen, under Section 2, Ninth, of the Railway Labor Act, involving representation of road train conductors, employees of the Pennsylvania Railroad System. You acknowledged our letter on October 3, and I am now in receipt of yours of October 23, in which you advise that this Case will soon be reached on your docket for handling and you therefore suggest that any statement which we may care to make in connection therewith, be submitted to your Board promptly.

On April 18, 1941, the management of the Pennsylvania Railroad served notice on the General Chairman, Order of Railway Conductors and Brotherhood of Railroad Trainmen, of their desire to revise the working agreements. This notice was served in advance of the notice of the five Transportation Organizations for wage increases and also in advance of the Carriers' notices for revisions of the schedule rules in the Eastern, Southeastern and Western Regions, later considered on a national basis and covered by settlement of December 5, 1941.

At the time the Pennsylvania Railroad Management's notice was served upon the General Chairmen, O. R. C. and B. R. T., April 18, 1941, and for many years prior thereto, the working agreements for conductors, trainmen and yardmen, were jointly negotiated and all rules for these three crafts were printed in a single book or working agreement.

While original conferences between management's representatives and the General Committees, O. R. C. and B. R. T., were held early in 1941, in connection with the proposed revision of schedule rules, negotiations were suspended during the national wage movement and resumed a short time after the settlement of the national wages and rules issues, December 5, 1941.

Negotiations on behalf of the Order of Railway Conductors have continued and are still in progress. Negotiations between the representatives of management and the Brotherhood of Railroad Trainmen were concluded in August and the signed agreement printed and distributed to become effective September 16, 1942. The origin and conclusion of separate negotiations between representatives of the Pennsylvania Railroad management and the General Committees of the Brotherhood of Railroad Trainmen, are attributable to the following circumstances:

1. At conference on or about July 24, 1942, a point of disagreement developed over the insistence of the Brotherhood of Railroad Trainmen that the Conductors' Extra Board should be maintained and operated under the joint jurisdiction of the O. R. C. and B. R. T. Committees.

2. A second point of difference developed between the O. R. C. and B. R. T. Committees in connection with the assignment of additional conductors as helpers, i.e., a sufficient number of conductors to handle the conductor's work of collecting transportation, etc., within the tour of duty on certain heavy

passenger trains. From January 1942 until July 1942, a number of additional conductors, compensated at the conductors' rate, had been assigned by agreement to certain heavy passenger runs. It is significant that with the commencement of the joint conference early in July 1942, and without notice to hold conference with the O. R. C. Committees, the assignment of additional conductors was abolished by management. In the joint conferences the B. R. T. claimed the exclusive right to represent and negotiate with management on conductor helpers and with this position management agreed. It seems to be a justifiable inference, in view of all of the circumstances, that some prior understanding had been reached between management and the B. R. T. with reference to this question.

3. As a result of these differences, the O. R. C. Committee representing the Conductors, served formal notice upon the railroad management and upon the Brotherhood of Railroad Trainmen on August 3, 1942, of the decision of the O. R. C. Committee to discontinue the joint relationship with the Brotherhood of Railroad Trainmen in the negotiation of a working agreement for conductors.

4. Thereafter the negotiations proceeded (separately) until on or about August 14, 1942, when an agreement between the management and B. R. T. Committee was signed.

5. When representatives of the Order of Railway Conductors arrived at the conference with officers of the Pennsylvania Railroad on August 27, 1942, to continue negotiations for the Conductors, they were presented with a copy of the agreement which management had signed with the Brotherhood of Railroad Trainmen. This agreement contained rules regulating the number of miles minimum and maximum, which would determine the number of conductors on the Conductors' Extra Board, stipulating the mileage levels (average) for extra conductors upon which increases or decreases in the

number of extra conductors assigned to the Board, would be determined.

6. The agreement with the B. R. T. also contained rules purporting to create a class of Assistant Conductors or Ticket Collectors, with a specified rate of pay, seniority, etc. After the distribution of the printed B. R. T. schedule the management posted notices that said purported craft or class was to be established by certain qualifying requirements, such as an examination, instruction on the handling of transportation, etc., after which said purported class or craft of Assistant Conductors or Ticket Collectors, would be supplied with all of the equipment, reports, ticket punch, tariffs, etc., theretofore issued only to qualified road passenger train conductors, i.e., men who had passed the required examination for promotion from trainman to conductor, whose names appeared on the Conductors' roster, and who had qualified for passenger service. The Pennsylvania Railroad has had no craft or class of Assistant Conductors or Ticket Collectors and have not in the years gone by, reported such a craft or class to be incorporated in the report M-300 I. C. C. Wage Statistics, Reporting Division No. 112. If one conductor could not perform the conductor's work, an additional conductor at conductor's pay had been assigned as a result of negotiations between the O. R. C. and the management until management's termination of this practice without notice, and the almost simultaneous agreement of management with the B. R. T.'s position that it had the right to negotiate for conductor helpers. The negotiation of a rule with the Brotherhood of Railroad Trainmen was therefore, an attempt to carve out and take away a portion of the conductors' work and assign it to an alleged new craft or class and place such purported craft or class under the jurisdiction of the B. R. T. The rate of pay established for such purported craft or class and printed in the agreement is \$1.29 per day below

the conductors' rate of pay, now in effect, and paid to conductors on helper assignments January to July 1942, hereinbefore mentioned.

7. Under present O. R. C. Rules governing the filling of conductors' vacancies when no Conductors' Extra Board is maintained or where Conductors' Extra Board is exhausted, the senior promoted emergency conductor is called for the vacancy. Management and the Committee of the Brotherhood of Railroad Trainmen devised a rule applicable to conductors, which they then incorporated in the agreement with the B. R. T. which purportedly became effective September 16, 1942, providing that the representatives of the management and of the B. R. T. would determine (notwithstanding the seniority of the men who might be in the terminal at the time) who would be called to perform work as a conductor.

8. Rules have been in effect on the Pennsylvania Railroad for many, many years zoning extensive seniority districts so as to enable men to remain in the service either as conductor or trainman in their home zones rather than being forced to accept employment in other zones distant from their home locations. Management and the B. R. T. Committee have continued this arrangement in the rules which have been written into the B. R. T. agreement, effective September 16, 1942, but management has demanded of the Conductors' Committee the surrender of the zoning rules so far as they are applicable to conductors, as a condition precedent to any negotiations recognizing the conductors' jurisdiction over Conductors' Extra Boards.

9. Under date of September 4, 1942, we received a report from our representatives that on that date (about 8:45 A. M.) management of the Pennsylvania Railroad called General Chairman J. E. Magill, Pennsylvania Lines East, requesting that he and C. E. Kalkman, General Chairman, Pennsylvania Lines West, meet Mr. C. E. Musser, Super-

intendent Labor and Wage, Eastern Region, in his office at 11:00 A. M. that date. The General Chairmen met him as requested and the following statements were made to the General Chairmen by Mr. Musser:

"(a) If you think you are going to secure any new or different Rules than we have given the Trainmen, you are mistaken.

(b) The Pennsylvania Management is paying approximately 75% of all pending B. of R. T. Claims docketed with the National Railroad Adjustment Board including claims that have been properly presented to the Management and not yet progressed to the Board, all of which will be paid on the basis of the B. of R. T. Agreement, effective September 16, 1942.

(c) The O. R. C. Committee will be in an embarrassing position if they do not have a new Agreement in effect at the same time that the B. of R. T. Agreement goes in effect, also the O. R. C. Committee will be in a hot spot when the B. of R. T. claims are paid based on the new Agreement.

(d) If you invoke Mediation we will not change our position with respect to Rules governing Conductors returning to Brakemen's ranks; and in event Mediation is invoked the B. of R. T. will be a party to such Mediation proceedings.

(e) We want it thoroughly understood that regardless of the outcome of this controversy that I (Mr. Musser) will still have a job with the Pennsylvania Railroad because I am too deeply entrenched, and while it is true we are looking for an understudy for my position, we have not as yet found one.

(f) There is no question but that the B. of R. T. is going to take a vote on the Pennsylvania in an attempt to secure the representation of the Road Conductors.

(g) This is the first time the General Chairmen on the Pennsylvania Railroad have ever called in a Vice-President to assist in Negotiating Rules and Working Conditions. They have always prided themselves with the fact that they have done the job without assistance."

In connection with paragraph (b) of the foregoing quotation, we attach hereto, a letter bearing date of August 17, addressed to the General Chairmen, B. of R. T. Committees, Pennsylvania Lines East and West, by the four General Managers, outlining the formula to be followed in the adjustment of pending claims as agreed upon in conference August 14 and August 17, 1942. The implication is that in reciprocation for the rules incorporated in the B. R. T. Agreement the General Chairmen B. R. T. agreed to the adjustment of their pending claims on a basis somewhat below (from a compensation standpoint) the amount of money involved in the claims as originally submitted.

The immediate printing and distribution of the Agreement which at the time its contents were made known to the O. R. C. Committee on or about August 27, 1942, and which did not become effective until September 16, 1942, considered in the light of Mr. Musser's statements in paragraphs (c) and (f) in the above quotation from conference record of September 4, 1942, constitute far reaching implications as to the programs apparently agreed upon between the Management and the General Committee, Brotherhood of Railroad Trainmen, culminating in the latter's invocation of your Board's services on or about September 23, 1942, official notice of which was conveyed to us in your letter of that date.

Negotiations between the Order of Railway Conductors and the management of the Pennsylvania Railroad are still under way and unless a satisfactory settlement

is reached, it will be necessary for the Order of Railway Conductors, as its next lawful step under the provisions of the Railway Labor Act, to invoke the services of your Board in its effort to complete the negotiations of schedule rules governing Conductors. In the meantime, the schedule rules governing Conductors as originally contained in the Agreement in effect April 18, 1941, at the time the Carrier served its notice of desire to revise said Agreement, are still in effect. The rules in the Agreement will continue in effect until revised, amended or abrogated in present negotiations. In the meantime, there are other rules in the Agreement between the Management and the Brotherhood of Railroad Trainmen, which allegedly became effective September 16, 1942, which contain provisions contrary to those rules governing Conductors' employment upon which Agreement has not yet been reached between Management and the O. R. C. Committee in present negotiations.

It will be readily clear to your Board that the status of the schedule negotiations between the O. R. C. Committee and the Railroad Management is the direct product of Management's incorporation of certain conductors' rules in the B. R. T. Agreement without conference with or concurrence of the Conductors' Committee. This action, coupled with the release of the printed Agreements, is highly prejudicial to the Conductors' position and has been used as the basis for invoking your Board's services on a question of representation. The position of the Conductors' Committee, Order of Railway Conductors, has been further prejudiced by the spreading of various detrimental rumors over the property and by the distribution of circular letters by representatives of the Brotherhood of Railroad Trainmen, which, coupled with the action of the Railroad Management, would prevent an election "without interference, influence, or coercion exercised by the Carrier."

Due to the war in Europe and the Lease Lend activi-

ties followed by our own entry into the war, there has been a very substantial, temporary increase in the number of conductors' positions on the Pennsylvania Railroad, as well as on other railroads as disclosed in the I. C. C. reports. The additional men now working as conductors came from the ranks of men, who before the emergency, were working in positions other than as conductors. It is a matter of common knowledge that the increased railroad business is but a temporary condition due to the war emergency and to hold an election under these temporary war conditions would not bear any relation to the situation as it existed before the present emergency and as it will exist after the war.

In conclusion it is our position and contention that an election should not be held under the provisions of the Railway Labor Act at this time; that such an election would be contrary to the provisions of the Act and should and ought to be contrary to the policy of your Board under present war conditions in that—

1. Joint negotiations on revision of schedule rules having been commenced with all parties, i.e., management, B. R. T. and O. R. C., without any question raised as to the right of the O. R. C. to represent conductors by either management or the B. R. T., the B. R. T. should be barred and precluded from seeking an election, during the continued pendency of the O. R. C. negotiations with the management.

2. Under the circumstances hereinbefore set forth, it would be contrary to the express provisions and the spirit of the Act to hold an election at this time.

3. An election at this time could not be said to be one "without interference, influence and coercion exercised by the Carrier".

4. To hold an election among the men now working as conductors on the Pennsylvania Railroad in war time and the tremendously increased traffic

and employment resulting therefrom, would be unfair and contrary to the intent and spirit of the Act. This condition, which admittedly is a temporary one and certain to cease almost immediately upon the conclusion of the war, would make it possible for a large number of men to vote in the class or craft of conductors at this time when a large majority of such men who have only been working as promoted conductors since the commencement of the emergency will, immediately upon its termination, be actually working as brakemen, flagmen, and baggagemen. An election at this time would place the balance of power with men whose positions as conductors will terminate at the end of the war.

5. The acceptance by this Board of the invocation and the conduct of an investigation and election during the pendency of negotiations commenced at a time when not only management but the B. R. T. as well, recognized the right of the O. R. C. to represent the craft of conductors, will prevent any further attempt by the management to reach an Agreement with the O. R. C. Committee on the revision of the schedule. The record discloses that as long ago as September 4, 1942, the Carrier was seeking to coerce the O. R. C. Committee by the threat that the B. R. T. were going to attempt to secure the Conductors' representation. Management has, by the wide spread of dates between conferences with the O. R. C. Committee, delayed negotiations apparently having been advised in advance of the representation issues to be raised. Management has been and is now attempting to coerce the O. R. C. Committee into an acceptance of rules and working conditions contrary to long established practice by both directly and indirectly implying that the O. R. C. had better agree upon a schedule agreement before invocation was requested by the B. of R. T. or before an election is held.

6. The record very briefly referred to herein clearly demonstrates some understanding, express or implied, as between the Carrier and the B. R. T. in an attempt to bring about the termination of the representation of the conductors by the O. R. C. upon the Pennsylvania Railroad. For your Board to grant an invocation and hold an election, under the circumstances, would be contrary to the intent and spirit of the Railway Labor Act; should and ought to be contrary to the policy of your Board under present war conditions, and would be at variance with the principles of union security recognized by the War Labor Board.

We therefore wish to go on record as opposing the granting of invocation and the holding of an election on the Pennsylvania Railroad for the reasons outlined above. We shall be pleased to present further evidence in support of what we have here stated and request that we be afforded an opportunity to be heard.

Yours very truly,

(Signed) H. W. Fraser

BG.

President, O. R. C.

EXHIBIT "H"

R-972

November 9, 1942

Mr. H. W. Fraser, President
Order of Railway Conductors
Cedar Rapids, Iowa

Dear Mr. Fraser:

This will acknowledge your letter of October 28, 1942, by which you protest the Board's acceptance of the application of the Brotherhood of Railway Trainmen and the holding of a representation election under the Railway Labor Act among road conductors of the Penn-

sylvania Railroad, case our file R-972. In addition you request an opportunity to be heard and present further evidence in support of your contentions.

In your letter the position of the Order of Railway Conductors is set forth under six separate counts, which for clarity we have further divided and summarized as follows:

1. Joint negotiations on revision of schedule rules having been commenced with all parties, i.e., management, B. R. T. and O. R. C., without any question raised as to the right of the O. R. C. to represent conductors by either management or the B. R. T., the B. R. T. should be barred and precluded from seeking an election, during the continued pendency of the O. R. C. negotiations with the management.

2. Under the circumstances hereinbefore set forth it would be contrary to the express provisions and the spirit of the Act to hold an election at this time.

3. An election at this time could not be said to be one "without interference, influence or coercion exercised by the carrier."

4. To hold an election among conductors on the Pennsylvania Railroad in war time and under temporary increased traffic resulting therefrom would be unfair and contrary to the intent and spirit of the Railway Labor Act.

5. (a) Acceptance by the Mediation Board of the invocation and the conduct of an investigation and election during the pendency of negotiations between the Order of Railway Conductors and the management will impair any further disposition of management to reach an agreement with the Order of Railway Conductors.

- (b) The management has been and is now attempting to coerce the Order of Railway Conductors committee into an acceptance of rules and

working conditions contrary to long-established practice by directly and indirectly implying that the Order of Railway Conductors should agree upon a revised schedule before an election is held.

6. (a) The record clearly demonstrates some understanding, express or implied, between the carrier and the Brotherhood of Railroad Trainmen in an attempt to terminate representation of conductors by the Order of Railway Conductors on the Pennsylvania Railroad.

(b) For the Mediation Board to grant invocation and hold an election under the circumstances would be contrary to the intent and spirit of the Railway Labor Act, should be contrary to the policy of the Board under present war conditions, and it would be at variance with the principles of union security recognized by the War Labor Board.

The above points are susceptible, we believe, to appropriate groupings for the purpose of consideration and discussion, and they are therefore being referred to under the three following general headings:

Nos. 2, 4 and 6 (b).—These items deal with Section 2, Ninth, of the Railway Labor Act and the duty of the Mediation Board thereunder. For ready reference we quote the pertinent provision of this Section as follows:

“If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations involved in the dispute, and certify the same to the carrier.”

While the Board has considered the circumstances and contentions in your letter, it has also considered its duty under the provisions of the Railway Labor Act. When an application for investigation of a representation dispute is received and it is found to be properly supported by employee authorizations, the Board has no alternative but to investigate it under the statute. The Board is charged with the responsibility of determining the names of the individuals or organizations designated and authorized to represent the employees, and certify the same to the carrier. Discharge of these functions is without qualification as to the circumstances out of which the representation dispute arose. Failure to proceed with an investigation when its services have been properly invoked would ultimately subject the Board to mandamus action as a means of forcing it to execute its administrative functions under the law.

It has been observed by the Board that an organization seeking representation of a craft or class of employees will request an election at its most opportune time, whether it be a temporary increase in the business of the carrier, as in this case, or an intra-union quarrel which arouses resentment of the employees, as in other cases. Whatever the pretext for seizing such advantages, it follows that the selection of representatives under such circumstances is generally lacking in stability which in itself creates demand for "repeat" elections from which the Board has no escape. Nevertheless the Board may not consider withholding the conduct of an election because temporary conditions appear to favor one of the contesting organizations.

It is noted you contend that for the Board to accept the Brotherhood's invocation and conduct an election under present war conditions would be contrary to the intent and spirit of the Railway Labor Act and should be contrary to the policy of the Board. You are familiar, of course, with the consideration which the Board fre-

quently in the past has given to the proposition that the standard railway labor unions find ways and means to settle their representation questions among themselves. Such efforts of the Board require no elaboration in this discussion. Suffice it to reiterate that such disputes seriously handicap the Board in its efforts to give prompt and efficient attention to mediation, its most important service and duty under the Railway Labor Act. If a railway labor union wishes to precipitate an inter-union representation dispute during the national emergency it must assume the responsibility for such a determination; but the statute leaves no discretion to the Board respecting its duties to resolve such disputes.

The principles of union security as developed by the War Labor Board, referred to by you, pertain to the protection of union membership and not to the avoidance of representation elections, as we understand it. Moreover, it is a framework the development and application of which, in the railway industry, addressed itself in the first instance directly to the carrier and its employees and may involve a legal interpretation of the Railway Labor Act which this Board is not empowered to make. Obviously, it raises no barrier to procedure in the instant case.

Nos. 1 and 5 (a)—These items deal with the effect which the investigation of a representation dispute has on pending negotiations on schedule changes for the same craft or class of employees.

Frequently it has been shown in the Board's experience that when a dispute is pending concerning the representation of a craft or class of employees, there can be no real progress toward the settlement of disputes concerning changes in rates of pay, rules and working conditions even though the representation with which the management is dealing is of long standing. Under such circumstances the Board has consistently followed the practice of taking action under Section 2,

Ninth, to resolve the representation dispute and thus eliminate this obstacle to settlement of the dispute through mediation.

Although mediation is not involved in your negotiations with the carrier, the problem presented is essentially the same. Your statement to the effect that the management is now using the representation issue as a means of coercing the Order of Railway Conductors' committee into acceptance of rules contrary to the long-established practice of your organization, evidences proof of our observation that where the question of representation is raised it is extremely difficult to negotiate rules until the representation issue is settled.

The Brotherhood's application is properly executed and adequately supported by employee authorizations, and the Board cannot find that the interference with your negotiations, as outlined by you, forms any legal basis for its rejection by the Board or for our delaying the investigation which the law compels.

Nos. 3, 5 (b) and 6 (a)—These items deal with alleged activity of the carrier designed to influence employees in their choice of representatives, which action is prohibited by Section 2, Third, of the Act. For convenience that part of the law here referred to is quoted as follows:

"Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence or coerce the other in its choice of representatives."

The contentions which you make regarding the carrier's influence arise out of circumstances ante-dating the Board's investigation of this case which was begun on November 2, 1942, circumstances in respect of which

the Mediation Board possesses no jurisdiction. Our power in such matters is to insure that during the time of taking a secret ballot or in exercising other methods of ascertaining the choice of representatives, the employees shall be free from interference, influence or coercion by the carrier. This, the Board can and will do within a prescribed area if, and when, an election is being held.

In this comment on carrier influence, it seems unnecessary to do more than point out to you that the Railway Labor Act prescribes an exclusive procedure for the protection of employees in the choice of representatives. The provisions of Section 3 as quoted above may be made effective through the application of Section 10 of the Act.

This leaves for final consideration your willingness to present further evidence in support of your statements and your request that you be afforded an opportunity to be heard. If you have in mind a formal hearing at which the interested parties would be present, we find nothing in the matters alleged in your protest which falls within the purview of a formal hearing customarily held in connection with representation disputes. As you know, hearing held by the Board under Section 2, Ninth, of the law has been for the purpose of determining who should participate in an election.

We shall be pleased, of course, to discuss orally with you or your representatives, if you wish, the basis upon which the Board has reached the conclusions stated herein, and we shall be glad to have you call at our office for this purpose any time you are in Washington.

In the above discussion we have dealt specifically with the issues raised by your protest as well as with your request for a hearing and we have pointed out the reasons why the Board is duty bound under the law to accept and act upon the Brotherhood's application. We have also shown why the Board cannot deal with the

other matters presented by you. We do not find in your submission reference to any provisions of the Railway Labor Act under which your protest may be legally granted, nor does the Board, itself, find any such provisions. Therefore, we conclude we have no alternative but to continue the investigation of this case which was commenced at Philadelphia, November 2, and the mediator in charge of the investigation has been advised accordingly.

By order of the NATIONAL MEDIATION BOARD.
Secretary.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

ORDER OF RAILWAY CONDUCTORS
OF AMERICA, et al., *Plaintiffs*,

vs.

NATIONAL MEDIATION BOARD,
PENNSYLVANIA RAILROAD COM-
PANY, BALTIMORE AND EASTERN
RAILROAD COMPANY, and BROTH-
ERHOOD OF RAILROAD TRAIN-
MEN, et al., *Defendants*.**Civil Action
No. 17,899****ANSWER BY DEFENDANT, BROTHERHOOD OF
RAILROAD TRAINMEN, TO AMENDED COM-
PLAINT FOR DECLARATORY AND INJUNC-
TIVE RELIEF****COUNT I**

Comes now the Defendant, Brotherhood of Railroad Trainmen, Answering the Amended complaint in the paragraph order alleged, states as follows:

1. Does not have sufficient knowledge or information to form a belief as to the truth of said allegations and therefore neither admits nor denies the same.
2. Does not have sufficient knowledge or information to form a belief as to the truth of said allegations and therefore neither admits nor denies the same.
3. Does not have sufficient knowledge or information to form a belief as to the truth of said allegations and therefore neither admits nor denies the same.
4. Admitted.
5. Does not have sufficient knowledge or information to form a belief as to the truth of said allegations and therefore neither admits nor denies the same.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. The allegations of this paragraph containing conclusions of law are denied and the jurisdiction of this Court to grant injunctive relief is likewise denied.

11. Denies that at this time the ORC is a duly accredited representative and bargaining agent for the class and craft of road conductors on the Penn RR, but states that on December 27th, 1942, the National Mediation Board (Case No. R-972) certified "that the Brotherhood of Railroad Trainmen has been duly designated and authorized to represent the following craft or class of employees of the Pennsylvania Railroad for the purposes of the Railway Labor Act (road conductors)", said certification showing a vote of 1680 road conductors having voted for the BRT and 1122 as voting for the ORC, 8 road conductors having voted for other organizations, 81 ballots being void, 3283 road conductors being eligible to vote. Therefore the BRT received not only a majority of those voting, but a majority of those eligible to vote.

Admits the BRT is a duly accredited and recognized representative and bargaining agent for the class and craft of road brakemen on the Penn RR as well as for the class and craft of yard conductors, yard brakemen, baggagemen and switch tenders.

Admits that the BRT has jointly negotiated contracts or schedules with the railroad common carriers with regard to rates of pay, rules and working conditions of road conductors and road brakemen with the Penn RR.

Denies that such a schedule was negotiated to become effective April 1, 1927, but states that such an agreement has been in effect since August 1, 1921, which agreement was revised effective April 1, 1927, but admits that Plaintiffs' Exhibit "A" is a true copy.

Denies that said schedule is still in full force and effect and denies each and every other allegation of said paragraph, which is not herein expressly admitted.

12. Admits the allegations except that it denies that said conferences were held in abeyance by consent of all concerned until December 5, 1941, but states that continuous negotiations took place both by letters and conferences until August 3, 1942, when the Plaintiff, ORC, served notice of withdrawal from said conferences and joint negotiations.

13. Admits that there had developed a great increase in passenger traffic upon the Penn RR, but is unable to state whether said increase is due to the Lease-Lend Program and/or other causes, and admits that it became difficult for a single conductor to collect tickets and fares and perform his duties.

Denies that the ORC negotiated with the Penn RR for the placing of additional conductor or conductors on heavy passenger trains and denies each and every other material allegation of said paragraph.

This defendant states that long prior to the present emergency or Lease-Lend Program, passenger conductors for many years prior to the present emergency required and received assistance in the collection of tickets and fares from passenger brakemen represented by the BRT.

14. Admits that ORC withdrew from said joint negotiations but has no knowledge as to whether or not written notice of its withdrawal was served on the Penn RR on August 3, 1942, or whether Exhibit "B" is a true copy of said notice of withdrawal.

Has no knowledge as to whether or not Exhibit "C" is a true copy of letter of protest sent the Penn RR and therefore can neither admit or deny the same.

Denies each and every other material allegation of said paragraph.

15. Denies that the BRT and Penn RR signed and

executed any agreement at any time encroaching upon or invading the right of the representative of the class or craft of road conductors, but admits that on August 14, 1942, the BRT and the Penn RR entered into an agreement and the Plaintiff's Exhibit "D" is a correct copy of said agreement and that paragraph P-A-1 is correctly copied.

Denies each and every other material allegation of said paragraph 15.

16. Does not have sufficient knowledge or information to form a belief as to the truth of the alleged publication of certain rules and regulations on September 12, 1942, by the Penn RR and therefore neither admits nor denies the same.

Denies each and every other material allegation of said paragraph 16.

17. Admits that paragraph 5-N-5 and 5-N-6 of Exhibit "D" are correctly copied.

Denies each and every other material allegation of said paragraph.

18. Admits the allegations of this paragraph concluding with the quotation of paragraph 5-F-1.

Denies the balance of said paragraph.

19. Does not have sufficient knowledge or information to form a belief as to the truth of the allegation as to whether or not the Penn RR since August 14, 1942, has failed and refused, and continues to refuse, to negotiate or bargain with the ORC and therefore neither admits nor denies the same.

Denies each and every other material allegation of said paragraph.

COUNT II

20. Answering the second claim this defendant repeats each and every answer contained in paragraphs Nos. 1 to 19 both inclusive.

21. Admits there has been an increase in railroad traffic on the Penn RR since the entry of the United States in the World War, which was on December 8, 1941, and not on December 7, 1941, as alleged.

Denies each and every other material allegation of said paragraph.

22. Admits that the order of promotion on the Penn RR is from road brakeman to road conductor and that as a result of said emergency and the great increase in railroad traffic some men who had prior to said emergency and in normal times been working as road brakemen entered into and upon active service as road conductors.

In the absence of an allegation as to the specific number of such men, this defendant denies the number was "large and substantial".

23. Admits that General Chairman of the ORC and General Chairman of the BRT engaged in conferences between themselves.

Admits that the General Chairman of the ORC joined with the General Chairman of the BRT in preparing proposals concerning working conditions for counter-submission to the said Penn RR, which rules were submitted to the Penn RR on or about April 9, 1942.

Denies each and every other material allegation in said paragraph.

24. Denies that in July, 1942, the BRT filed before the first division of the National Railway Adjustment Board certain time claims asserting certain road brakemen had assisted road conductors in the taking of tickets from passengers and were entitled to be compensated as assistant conductors or ticket collectors or the rate of pay as road brakemen.

States that three such claims have been filed, one in January, 1938, one in December, 1939, and the last in March, 1940, it being a claim of the BRT that such men were entitled to extra compensation. It was not claimed

however that said men would be regarded as conductors thereby accepting the full responsibility for the operation of the train.

Denies each and every other material allegation in said paragraph.

25. Denied.

26. Admits the making of an agreement between the Penn RR and the BRT, which includes assistant conductors or ticket collectors.

Denies that said group was a new class or craft, but states that said group was placed in the agreement between the BRT and the Penn RR August 1, 1921.

Denies each and every other material allegation in said paragraph.

27. Admits that an agreement with respect to assistant conductors or ticket collectors was incorporated in the BRT schedule.

Does not have sufficient knowledge or information to form a belief as to the truth of the allegation as to whether or not the Penn RR caused said schedule to be rushed to publication and circulated among the class or craft of road conductors, and therefore neither admits nor denies the same.

Denies each and every other material allegation of said paragraph.

28. Admits Exhibit "F" is a true copy of letter addressed by certain General Managers of the Penn RR to the two General Chairmen of the BRT.

Denies each and every other material allegation of said paragraph.

29. Does not have sufficient knowledge or information to form a belief as to the truth of allegations to answer, and therefore neither admits nor denies the same.

30. Does not have sufficient knowledge or information to form a belief of the same, and therefore neither admits nor denies.

31. Denies each and every material allegation of said paragraph.

32. Denied.

33. Does not have sufficient knowledge or information to form a belief as to the truth of the allegations therein contained and therefore neither admits nor denies the same.

34. Admits that an invocation was filed with the Mediation Board to be certified as the duly accredited representative of the class and craft of road constructors, and that the said Mediation Board accepted jurisdiction and further says that on December 27, 1942, Case No. R-972, said Mediation Board so certified the BRT.

COUNT III

35. This defendant repeats each and every answer to the allegations contained in paragraph Nos. 1 to 34 inclusive.

36. Does not have sufficient knowledge or information to form a belief as to the truth of the same and therefore neither admits nor denies.

37. Does not have sufficient knowledge or information to form a belief as to the truth of the contents of the alleged protest and therefore neither admits nor denies the contents of said alleged protest.

38. Does not have sufficient knowledge or information to form a belief as to the truth of the same and therefore neither admits nor denies.

39. Does not have sufficient knowledge or information to form a belief as to the truth of said allegations or whether Exhibit "H" is a true copy of the ruling and therefore neither admits nor denies.

40. Does not have sufficient knowledge or information as to the ruling of the Board or whether Exhibit "H" is a true copy and therefore neither admits nor denies the same.

Denies the legal construction placed on Section 2, ninth, of the Railway Labor Act.

Denies each and every other material allegation of said paragraph.

41. Has no knowledge as to the violations of the Railway Labor Act charged against the Penn RR and therefore neither admits nor denies the portion of said paragraph relating to these charges.

Denies each and every other material allegation of said paragraph.

42. Denied.

43. Admits the Board ordered an election on the Penn RR to determine the bargaining representative for the craft or class of road conductors thereon and admits the BRT received the majority of the votes cast at said election and admits that on December 27, 1942, the Board issued a certification that the BRT was a duly designated and authorized representative of the craft or class of road conductors on the Penn RR.

States further that the BRT received 1680 votes; the ORC receiving 1122 votes; that 3283 employees were eligible to vote and therefore the BRT not only received a majority of the votes cast, but a majority of the number of employees eligible to vote.

44. Denied.

45. Denied.

WHEREFORE, Having fully Answered the Amended Complaint herein, this defendant prays that it be dismissed.

BERNARD M. SAVAGE

521 Title Building
Baltimore, Maryland

ALFRED L. BENNETT

Denrike Building
Washington, D. C.

Attorneys for Brotherhood of Railroad Trainmen.

Copy of Answer to Amended Complaint mailed to:

Robert L. Pierce, Esquire,
Room 3123 Department of Justice Building,
Washington, D. C.
*Attorney for Defendants,
National Mediation Board, George A.
Cook and David J. Lewis.*

R. A. Bogley, Esquire,
901 Hibbs Building,
Washington, D. C.
*Attorney for Pennsylvania Railroad
Company and Baltimore and Eastern
Railroad Company, Defendants.*

I HEREBY CERTIFY That copies of Answer were deposited by me in the United States Mail addressed to the above parties on the twenty-fifth day of January, 1943.

BERNARD M. SAVAGE

521 Title Building
Baltimore, Maryland.

Attorney for Brotherhood of Railroad Trainmen.

I HEREBY CERTIFY that a copy of the above Answer was served by me upon Rufus G. Poole, Esq., attorney for Plaintiffs, 815 15th Street, N. W., Washington, D. C., this 26th day of January, 1943.

ALFRED L. BENNETT

Attorney for Brotherhood of Railroad Trainmen.

IN THE
DISTRICT COURT OF THE UNITED STATES
 FOR THE DISTRICT OF COLUMBIA

ORDER OF RAILWAY CONDUCTORS OF AMERICA; H. W. FRASER as President of the Order of Railway Conductors of America, Room 312, 10 Independence Avenue, S. W., Washington, D. C.; B. C. JOHNSON as Vice President of the Order of Railway Conductors of America, Room 312, 10 Independence Avenue, S. W., Washington, D. C.; C. E. KALKMAN as General Chairman of the General Committee of Adjustment of the Order of Railway Conductors of America on The Pennsylvania Railroad for the Lines West, Room 312, 10 Independence Avenue, S. W., Washington, D. C.; and J. E. MAGILL as General Chairman of the General Committee of Adjustment of the Order of Railway Conductors of America on The Pennsylvania Railroad for the Lines East, Room 312, 10 Independence Avenue, S. W., Washington, D. C., *Plaintiffs*.

Civil Action
No. 17,899

v.

NATIONAL MEDIATION BOARD, GEORGE A. COOKE and DAVID J. LEWIS individually and as members of the National Mediation Board, 18th and F Streets, N. W., Washington, D. C.; **THE PENNSYLVANIA RAILROAD COMPANY,** 626 14th Street, N. W., Washington, D. C.; **BALTIMORE AND EASTERN RAILROAD COMPANY,** 626 14th Street, N. W., Washington, D. C.; and **BROTHERHOOD OF RAILROAD TRAINMEN,** Room 400, 10 Independence Avenue, S. W., Washington, D. C., *Defendants*.

**SEPARATE ANSWER OF THE PENNSYLVANIA
RAILROAD COMPANY TO THE AMENDED
COMPLAINT FOR DECLARATORY AND IN-
JUNCTIVE RELIEF.**

FIRST DEFENSE

The complaint fails to state a claim against defendant, The Pennsylvania Railroad Company, upon which relief can be granted.

SECOND DEFENSE

The complaint fails to set forth a right of action over which this Court has jurisdiction.

THIRD DEFENSE

1, 2 and 3. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2 and 3 of the amended complaint.

4. This defendant admits the allegations of paragraph 4 of said amended complaint.

5. This defendant admits that the Baltimore and Eastern Railroad Company is a corporate common carrier within the provisions of the Railway Labor Act and is a corporation, incorporated under the laws of the State of Maryland, and denies all of the remaining allegations of paragraph 5 of said amended complaint.

6, 7, 8 and 9. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 6, 7, 8 and 9 of said amended complaint.

10. This defendant denies the allegations of paragraph 10 of said amended complaint.

11. This defendant denies that the ORC is the duly accredited and recognized representative and bargain-

ing agent for road conductors on The Pennsylvania Railroad and allèges that the National Mediation Board, in accordance with the powers conferred upon it by Section 2, Ninth, of the Railway Labor Act^o of 1934, (Act of May 20, 1926, C. 347, Sec. 2, 44 Stat. 577, as amended June 21, 1934; C. 691, Sec. 2, 48 Stat. 1186, 45 U.S.C.A. Sec. 102), has held an election among the employes of the class or craft of road conductors on The Pennsylvania Railroad and as a result thereof and in accordance with the powers conferred upon it by the Railway Labor Act has certified, under date of December 27, 1942, that:

"On the basis of the investigation and report of election, the National Mediation Board hereby certifies that the Brotherhood of Railroad Trainmen has been duly designated and authorized to represent the following craft or class of employes of the Pennsylvania Railroad, for the purposes of the Railway Labor Act:

Road Conductors."

(In the Matter of Representation of Employes of The Pennsylvania Railroad Road Conductors, Case No. R-972, National Mediation Board; this defendant admits that the BRT is the duly accredited and recognized representative and bargaining agent for the class and craft of road brakemen, yard conductors, ~~yard~~ brakemen, baggagemen and switch tenders on The Pennsylvania Railroad; this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations with respect to contracts negotiated jointly by the ORC and the BRT with other railroad common carriers; this defendant alleges that on August 1, 1921, it entered into an agreement with its road conductors, then represented by ORC, and its road and yard brakemen, baggagemen, assistant conductors or ticket collectors and switch tenders,

represented by BRT, covering the rates of pay, rules and working conditions of the said classes of employes and that said agreement was amended April 1, 1927; this defendant admits that Exhibit "A", attached to said amended complaint, is a true and correct copy of the said agreement, as amended April 1, 1927, and that said agreement, as amended April 1, 1927, is still in full force and effect between this defendant and its employes of the class or craft of road conductors; and this defendant denies all of the remaining allegations of paragraph 11 of said amended complaint.

12. This defendant admits that on or about April 18, 1941, it served a notice upon the ORC and BRT as the respective representatives at that time of road conductors and of yard conductors, road and yard brakemen, baggagemen, assistant conductors or ticket collectors and switch tenders, of the desire of the management to change certain provisions in said agreement, as amended April 1, 1927; this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations relating to meetings and agreements between representatives of the ORC and the BRT with reference to joint negotiations with this defendant; this defendant admits that joint conferences were held by its representatives with representatives of the ORC and BRT and that said conferences commenced on or about May, 1941; and this defendant denies all of the remaining allegations of paragraph 12 of said amended complaint.

13. This defendant admits that during the years 1941 and 1942 the volume of passenger traffic increased and that in a few instances, for a short period of time in the latter part of the year 1941, additional road conductors were placed upon a few of this defendant's trains; and this defendant denies all of the remaining allegations of paragraph 13 of said amended complaint.

14. This defendant admits that Exhibits "B" and "C", attached to said amended complaint, are true and

correct copies of letters received by this defendant, both dated August 3, 1942, and signed by J. E. Magill and C. E. Kalkman on behalf of the ORC; and this defendant denies all of the remaining allegations of paragraph 14 of said amended complaint.

15. This defendant admits that it entered into an agreement on August 14, 1942, with its employes in the craft or class of yard conductors, road and yard brakemen, baggagemen, assistant conductors or ticket collectors and switch tenders, through the duly accredited representative of said employes, the BRT; admits that Exhibit "D", attached to said amended complaint, is a true and correct copy of said agreement, and admits that the quotation set forth in paragraph 15, page 8, of said amended complaint, is a true and correct copy of Regulation P-A-1 of said agreement; and this defendant denies all of the remaining allegations of paragraph 15 of said amended complaint.

16. This defendant admits that Exhibit "E", attached to said amended complaint, is a true and correct copy of certain rules and regulations issued by the Accounting Department of this defendant, and denies all of the remaining allegations of paragraph 16 of said amended complaint.

17. This defendant admits that the quotations set forth in paragraph 17, pages 10 and 11, of said amended complaint, are true and correct copies of paragraphs 5-N-5 and 5-N-6 of said agreement between this defendant and its yard conductors, road and yard brakemen, baggagemen, assistant conductors or ticket collectors and switch tenders, dated August 14, 1942, and denies all of the remaining allegations of paragraph 17 of said amended complaint.

18. This defendant admits that at the time of the making and signing of said agreement, dated August 14, 1942, and ever since said time and at the present time, said agreement of August 1, 1921, as amended April 1, 1927, was and still is in full force and effect as

an agreement between this defendant and its road conductors and admits that the quotation appearing in paragraph 18, on page 12 of said amended complaint, is a true and correct copy of paragraph "5-F-1" of said agreement of August 1, 1921, as amended April 1, 1927; and this defendant denies all of the remaining allegations of paragraph 18 of said amended complaint.

19. This defendant denies the allegations of paragraph 19 of said amended complaint.

20. Answering paragraph 20 of said amended complaint, this defendant reiterates its answers to each of paragraphs numbered 1 to 19, inclusive, as hereinabove set forth, with like effect as if here fully repeated.

21. This defendant admits that after the entry of the United States in the present war, there was an increase in passenger traffic over the lines of this defendant, and this defendant denies all of the remaining allegations of paragraph 21 of said amended complaint.

22. This defendant admits the allegations of paragraph 22 of said amended complaint.

23. This defendant admits that certain proposals with respect to working conditions for road conductors and for yard conductors, road and yard brakemen, baggagemen, assistant conductors or ticket collectors and switch tenders, were submitted to it by representatives of the ORC and BRT on or about April 9, 1942, and this defendant denies all of the remaining allegations of paragraph 23 of said amended complaint.

24. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that during July, 1942, the BRT filed with the National Railroad Adjustment Board certain claims asserting that road brakemen who had assisted road conductors in the taking of tickets were entitled to be compensated at the rate of pay of "Assistant Conductors or Ticket Collectors" rather than at the rate of pay for road brakemen; this defendant alleges that it received no notice of any such claims having been

filed with the said National Railroad Adjustment Board, or with any other Agency or Tribunal, and therefore, upon information and belief, denies that such claims were filed against it; and this defendant denies all of the remaining allegations of paragraph 24 of said amended complaint.

25, 26 and 27. This defendant denies the allegations of paragraphs 25, 26 and 27 of said amended complaint.

28. This defendant admits that Exhibit "F", attached to said amended complaint, is a true and correct copy of a letter, dated August 17, 1942, addressed by the four General Managers of this defendant to Messrs. H. F. Sites and U. D. Hartman, General Chairman of the BRT, and this defendant denies all of the remaining allegations of paragraph 28 of said amended complaint.

29 and 30. This defendant denies the allegations of paragraphs 29 and 30 of said amended complaint.

31. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations relating to representations made by the BRT to the ORC and to the solicitation by the BRT of authorization cards, and this defendant denies that it conspired or confederated with the BRT, as alleged in paragraph 31 of said amended complaint, or in any manner whatsoever.

32. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of said amended complaint.

33. This defendant denies the allegations of paragraph 33 of said amended complaint.

34. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of said amended complaint.

35. Answering paragraph 35 of said amended complaint, this defendant reiterates its answers to each of paragraphs numbered 1 to 34, inclusive, as herein-

above set forth, with like effect as if here fully repeated.

36, 37, 38, 39, 40, 41 and 42. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 36, 37, 38, 39, 40, 41 and 42 of said amended complaint.

43. This defendant admits the allegations of paragraph 43 of said amended complaint.

44. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations relating to the alleged failure and refusal of the National Mediation Board to perform its duties, and denies all of the remaining allegations of paragraph 44 of said amended complaint.

45. This defendant denies the allegations of paragraph 45 of said amended complaint.

FOURTH DEFENSE

For further answer to said amended complaint, this defendant alleges that this Court is without power or authority to grant the prayers thereof, for the following reasons:

1. The granting by this Court of the prayers of said amended complaint numbered 1, 2(a) and (b), 5, 6, 7, and 8, is prohibited by the provisions of the so-called Norris-LaGuardia Act (Act of March 23, 1932, c. 90, Secs. 1-15; 47 Stat. 70-73; 29 U.S.C.A. Sec. 101-115), and particularly Sec. 7 thereof (Act of March 23, 1932, c. 90, Sec. 7; 47 Stat. 71; 29 U.S.C.A. Sec. 107); and

2. The allegations of said amended complaint do not state a claim upon which the declaratory judgments sought in prayers numbered 3 and 4 therein can be granted, for the reason that said allegations fail to show the existence of an actual controversy between the plaintiff and this defendant.

McKENNEY, FLANNERY & CRAIGHILL
 By **R. A. BOGLEY**

*Attorneys for defendant, The Pennsylvania
 Railroad Company*

Hibbs Building, Washington, D. C.

Of Counsel:

JOHN DICKINSON

GUY W. KNIGHT

Copy of the foregoing answer acknowledged this
 27th day of January, 1943.

RUFUS G. POOLE

V. C. SHUTTLEWORTH

Attorneys for Plaintiffs.

ROBERT L. PIERCE

EDWARD DUMBAULD

*Attorneys for defendants, National
 Mediation Board, George A. Cook
 and David J. Lewis.*

BERNARD M. SAVAGE

ALFRED L. BENNETT

*Attorneys for defendant, Brother-
 hood of Railroad Trainmen.*

IN THE
DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

ORDER OF RAILWAY CONDUCTORS
 OF AMERICA, et al., *Plaintiffs*,

v.

THE NATIONAL MEDIATION BOARD,
 et al., *Defendants*,

Civil Action
 No. 17,899

ANSWER OF NATIONAL MEDIATION BOARD

Come now the National Mediation Board and George A. Cook, its chairman, defendants in the above-entitled cause, and for answer to the amended complaint therein, say:

COUNT I

1. These defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1 through 6, inclusive, of the complaint and, therefore, neither admit nor deny the same; except that they admit that the plaintiff Order of Railway Conductors of America (hereinafter sometimes referred to as O. R. C.) and the defendant Brotherhood of Railway Trainmen (hereinafter sometimes referred to as B. R. T.) are labor organizations eligible to serve as representative of employees of a carrier under the terms of the Railway Labor Act as amended, and that the defendant Pennsylvania Railroad Company (hereinafter sometimes referred to as P. R. R.) is a carrier subject to the provisions of the said act.

2. The allegations of paragraphs 7, 8, and 9 of the complaint are admitted, except that these defendants allege that the resignation of the defendant David J. Lewis as a member of the National Mediation Board became effective on the last day of January, 1943, and these defendants therefore suggest the dismissal of the complaint and all proceedings herein with respect to the said defendant David J. Lewis.

3. These defendants neither admit nor deny the allegations contained in paragraph 10 of the complaint, which are conclusions of law.

4. With respect to the allegations of paragraph 11 of the complaint, these defendants are without knowledge or information sufficient to form a belief as to the truth thereof and therefore neither admit nor deny the same except that the defendants deny that at this time the O. R. C. is the duly accredited and recognized representative and bargaining agent for the craft and class of road conductors on the P. R. R. but allege that on the contrary the National Mediation Board on December 27, 1942, certified that the B. R. T. has been duly designated and authorized to represent the craft or class of road conductors on the P. R. R. for the purposes of the Railway Labor Act, a copy of said certification being attached hereto and incorporated by reference herein as Exhibit A to this Answer.

5. These defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 12, 13, 14, 15, 16, 17, 18, and 19 of the complaint, and therefore neither admit nor deny the same.

COUNT II

6. In answer to paragraph 20 of the complaint, these defendants repeat and reallege each and every allegation hereinabove contained in answer to paragraphs numbered 1 to 19, inclusive, of the complaint.

7. These defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 21 to 33, inclusive, of the complaint, and therefore neither admit nor deny the same.

8. With respect to the allegations of paragraph 34 of the complaint, these defendants admit and allege that on or about September 21, 1942, the National Mediation Board received an Application dated September 18, 1942, filed by B. R. T. pursuant to the provisions of Section 2 (ninth) of the Railway Labor Act as amended, invoking the services of said board to investigate a dispute among the employees of the P. R. R. and to certify the names of the duly designated and authorized representatives of the employees involved in the dispute; and that, pursuant to the said statutory provisions, the National Mediation Board did duly conduct such an investigation and hold an election and take a secret ballot of the employees among the craft or class of road conductors involved and utilize appropriate methods of ascertaining the names of the duly designated and authorized representatives of the said employees in such manner as insured the choice of representatives by the said employees without interference, influence, or coercion exercised by the carrier, and did on December 27, 1942, certify the Brotherhood of Railroad Trainmen as the duly designated and authorized representatives of said craft or class, a copy of which certification is attached hereto and incorporated by reference herein as Exhibit A to this Answer.

COUNT III

9. In answer to the allegations of paragraph 35 of the complaint, these defendants repeat and reallege each and every allegation hereinabove contained in answer to paragraphs numbered 1 to 35, inclusive, of the complaint.

10. In answer to the allegations of paragraphs 36 to 40, inclusive, these defendants admit receipt by the National Mediation Board on or about October 30, 1942, of a written communication dated October 28, 1942, of which Exhibit G to the complaint is a true and correct copy; to which communication the National Mediation Board replied on or about November 9, 1942, of which reply Exhibit H to the complaint is a true and correct copy; which said Exhibits G and H speak for themselves.

11. These defendants neither admit nor deny the allegations contained in paragraphs 41 and 42 of the complaint, as they are conclusions of law.

12. In answer to paragraph 43 of the complaint, these defendants admit that the National Mediation Board, pursuant to the provisions of law, did conduct an election and take a secret ballot of the employees involved and did issue a certification, of which Exhibit A hereto is a true copy, all of which more particularly appears in the allegations of paragraph 8 hereinabove.

13. In answer to paragraph 44 of the complaint, these defendants deny that the said election and the said certification are illegal, invalid, null and void; and allege that the failure of the National Mediation Board to determine the questions relative to the charges of unfair labor practices on the part of the P. R. R. referred to in said paragraph 44 of the complaint, assuming that the said board had jurisdiction to determine such questions, did not invalidate the said election and the said certification; and allege that the said election and the said certification cannot be set aside unless it can be shown that coercion by the P. R. R. actually resulted in the loss of the said election by the O. R. C. These defendants further allege that this Court has jurisdiction to try *de novo* such issues, and is not required, and plaintiffs do not seek, to remand the case to the National Mediation Board for a hearing to be held by said board on such

issues, assuming that said board has jurisdiction thereof; and these defendants further say that they will stand neutral before this Court with respect to such issues, in view of the fact that the said Board has not passed upon said issues, and that these defendants will accept and be bound by whatever determination this Court may reach with respect to said issues, and that their future action, if any, will be taken in accordance with such determination by this Court.

14. These defendants neither admit nor deny the allegations contained in paragraph 45 of the complaint for the reason that they are conclusions of law, and these defendants deny that, unless it be adjudged and decreed that said election and certification are of no force and effect and a nullity and such other relief be granted as prayed for in the complaint, plaintiffs will suffer irreparable damage, loss and injury.

WHEREFORE, having fully answered the amended complaint herein, these defendants pray that the relief prayed for by the plaintiffs be denied and that the complaint be dismissed.

ROBERT L. PIERCE,
EDWARD DUMBAULD,

*Special Assistants to the Attorney General.
Attorneys for Defendant National Media-
tion Board and George A. Cook.*

THURMAN ARNOLD
Assistant Attorney General

EDWARD M. CURRAN
*United States Attorney for the
District of Columbia*

I hereby certify that I have this day mailed copies of the foregoing answer to the following persons:

Rufus G. Poole, Esq.
815 Fifteenth St., N. W.
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ROBERT L. PIERCE

*Special Assistant to the Attorney General
Department of Justice
Washington, D. C.*

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

ORDER OF RAILWAY CONDUCTORS
OF AMERICA, et al., *Plaintiffs,*

v.

NATIONAL MEDIATION BOARD, et al.,
*Defendants.***Civil Action
No. 17,899****MOTION FOR SUMMARY JUDGMENT**

Now comes the Order of Railway Conductors of America, et al., plaintiffs in the above-entitled cause, by Rufus G. Poole, their attorney, and moves the Court to enter summary judgment for the plaintiffs in accordance with rule 56 of the Federal Rules of Civil Procedure, granting relief against the defendants, National Mediation Board, and George A. Cook, a member of the Board, as follows:

1. That the election conducted from December 5 to December 19, 1942, by the National Mediation Board, on the Pennsylvania Railroad, among the craft or class of road conductors, and the certificate issued December 27, 1942, by the National Mediation Board, certifying "that the Brotherhood of Railroad Trainmen has been duly designated and authorized to represent the craft or class of road conductors, employed by the Pennsylvania Railroad Company, for the purposes of the Railway Labor Act" be annulled, vacated, and set aside.

2. That the National Mediation Board and George A. Cook, a member of the Board, each of

them and their officers and employees be restrained and enjoined from holding an election or from utilizing any other method of ascertaining the bargaining representative for the craft or class of road conductors on the Pennsylvania Railroad Company, until the Board has investigated and considered the unfair labor practices, complained of in the amended complaint against the Pennsylvania Railroad Company, and until such time as the Board finds and determines after hearing that the unfair labor practices, complained of in said amended complaint, have ceased or will not interfere, influence, or coerce the craft or class of road conductors in their choice of a bargaining representative.

Attached is an affidavit of H. W. Fraser, President of the Order of Railway Conductors, setting forth facts in support of this motion showing that there is no genuine issue as to any material fact with respect to the relief prayed for, and that the plaintiffs are entitled to a summary judgment as a matter of law.

Rufus G. Poole
815 15th Street, N. W.
Washington, D. C.

V. C. Shuttlesworth
Merchants Bank Bldg.
Cedar Rapids, Iowa
Attorneys for Plaintiffs.

I hereby certify that copies of the foregoing Motion for Summary Judgment in the above-entitled cause were mailed, postage prepaid, this 8th day of March, 1943, to the following attorneys for defendants:

ROBERT L. PIERCE, Esquire
 EDWARD DUMBAULD, Esquire
 Special Assistants to the Attorney General
 Department of Justice
 Washington, D. C.

*Attorneys for Defendants,
 National Mediation Board, and
 George A. Cook.*

BERNARD M. SAVAGE, Esquire
 521 Title Building
 Baltimore, Maryland
 ALFRED L. BENNETT, Esquire
 1010 Vermont Avenue, N. W.
 Washington, D. C.

*Attorneys for Brotherhood of
 Railroad Trainmen.*

R. A. BOGLEY, Esquire
 901 Hibbs Building
 Washington, D. C.

*Attorney for Pennsylvania
 Railroad Company.*

Rufus G. Poole
 815 15th Street, N. W.
 Washington, D. C.
Attorney for Plaintiffs.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

ORDER OF RAILWAY CONDUCTORS
OF AMERICA, et al., *Plaintiffs*,

v.

Civil Action

No: 17,899.

THE NATIONAL MEDIATION BOARD,
et al., *Defendants*.**AFFIDAVIT IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**WASHINGTON
DISTRICT OF COLUMBIA } ss.

H. W. Fraser, being duly sworn, deposes and says:

1. That he is one of the plaintiffs in the above-entitled cause.

2. That he is and has been for more than a year President of the Order of Railway Conductors of America (referred to as the "ORC"), one of the plaintiffs in this cause, and has been active in the conduct of the affairs of said union, and is familiar with the matters complained of by the plaintiffs in the amended complaint.

3. Affiant refers to amended complaint herein for a more particular statement of the claims in this case.

4. Affiant believes that there is no genuine issue as to any material fact relevant to the summary judgment sought in the motion; that plaintiffs are entitled to judgment as a matter of law; and that the uncontested facts justifying a summary judgment are as herein-after set forth.

5. That on or about September 23, 1942, the Brother-

hood of Railway Trainmen (referred to as the "BRT") invoked the services of the National Mediation Board (referred to as the "Board") to be certified as the duly accredited representative of the craft and class of road conductors employed by the Pennsylvania Railroad Company (referred to as the "Penn RR").

6. That at the time of the BRT invocation, the ORC was the duly accredited and recognized representative and bargaining agency for the craft and class of road conductors on the Penn RR.

7. That the ORC on October 28, 1942, filed a protest with the Board against the holding of an election "at this time" among the craft or class of road conductors of the Penn RR on the ground that the Penn RR had committed certain acts, which unlawfully interfered with, influenced, and coerced the said conductors in their choice of a bargaining representative.

8. That the ORC also requested the Board to hold a hearing on said charges against the Penn RR.

9. That said protest and the first request for a hearing are contained in plaintiffs' Exhibit "G" to the amended complaint, a copy of which is attached hereto and incorporated herein.

10. That a second request for a hearing on said charges of interference by the Penn RR was made orally by representatives of the ORC on or about November 13, 1942.

11. That the Board denied the requests of the ORC for a hearing in a letter dated November 9, 1942, and signed by Mr. Robert F. Cole, Secretary of the Board, the text of which letter is plaintiffs' Exhibit "H", of the amended complaint, which is attached hereto and incorporated herein.

12. The Board admits in its answer that Exhibits "G" and "H" represent true and correct copies of the aforesaid communications which were exchanged between

the ORC and the Board, but pleads that these documents speak for themselves.

13. That affiant verily believes that Exhibit "H" shows that the denial of the request of the ORC for a hearing was based upon the fact that the Board was under the mistaken view that it had no jurisdiction or power to consider the charges of the ORC under the authority granted it by the Railway Labor Act to investigate and determine a representation dispute.

14. That the Board held no hearing or investigation to determine whether the ORC charges of interference against the Penn RR were true.

15. That the Board ordered an election amongst the craft and class of road conductors on the Penn RR for the purpose of determining the bargaining representative of such craft and class, which election was conducted from December 5 to December 19, and on December 27, 1942, the Board certified that the BRT had been duly designated and authorized to represent the class or craft of road conductors, employed by the Penn RR Company.

16. That the foregoing facts alleged in the amended complaint are not denied by the Board in its answer; such facts are either admitted by the Board, substantiated by Exhibits "G" and "H", which are attached hereto and made a part hereof (the correctness of which documents is admitted by the Board), or remain unanswered by the Board.

17. Affiant believes that the only question presented by the foregoing facts is one of law which should be determined by rule 56 of the Federal Rules of Civil Procedure.

18. That the principal question of law raised by the foregoing facts is whether the Board acted arbitrarily, unreasonably, unlawfully, and mistakenly as to its duties in failing and refusing to consider the charge of carrier interference against the Penn RR before con-

ducting an election and issuing a certification that the BRT was the representative of the road conductors employed by the Penn RR, and, consequently, whether the election and certification aforesaid are illegal, invalid, and null and void.

19. Affiant further says that he is competent to testify to the matters above stated, and that he has personal knowledge of the facts to which he has sworn except those matters which he has stated upon belief.

WHEREFORE affiant prays that judgment be ordered for the plaintiffs and against the defendant, National Mediation Board, as requested in the Motion for Summary Judgment to which this is attached.

H. W. FRASER,

Affiant

O. R. C. Building

Cedar Rapids, Iowa

Subscribed and sworn to before me this 24th day of February, 1943.

HELEN C. TUGENDHOFT,

Notary Public

I hereby certify that copies of the foregoing Affidavit in Support of Plaintiffs' Motion for Summary Judgment in the above-entitled cause were mailed, postage prepaid, this 8th day of March, 1943, to the following attorneys for defendants:

ROBERT L. PIERCE, Esquire

EDWARD DUMBAULD, Esquire

Special Assistants to the Attorney General
Department of Justice

Washington, D. C.

Attorneys for Defendants,

National Mediation Board, and

George A. Cook.

BERNARD M. SAVAGE, Esquire
521 Title Building
Baltimore, Maryland

ALFRED L. BENNETT, Esquire
1010 Vermont Avenue, N. W.
Washington, D. C.

*Attorneys for Brotherhood of
Railroad Trainmen.*

R. A. BOGLE, Esquire
901 Hibbs Building
Washington, D. C.

*Attorney for Pennsylvania
Railroad Company.*

RUFUS G. POOLE

Attorney for Plaintiffs
815 15th Street, N. W.
Washington, D. C.

IN THE
DISTRICT COURT OF THE UNITED STATES
 FOR THE DISTRICT OF COLUMBIA

ORDER OF RAILWAY CONDUCTORS
 OF AMERICA, et al., *Plaintiffs,*

v.

THE NATIONAL MEDIATION BOARD,
 et al., *Defendants.*

Civil Action
 No. 17,899

**AMENDED ANSWER OF NATIONAL
 MEDIATION BOARD**

Come now the National Mediation Board and George A. Cook, its chairman, defendants in the above-entitled cause, and with the consent of counsel for the plaintiffs, make the following amendments to their answer to the amended complaint therein and in all other respects re-iterate their original answer:

1. Amend paragraph 11 (p. 4) of the answer to read:

These defendants deny the allegations contained in paragraphs 41 and 42 of the complaint.

2. Amend paragraph 13 (p. 4) of the answer to read:

In answer to paragraph 44 of the complaint, these defendants deny that the said election and the certification are illegal, null and void; they deny that the Board, in not determining whether the labor practices charged to the Pennsylvania Railroad would interfere with, influence or coerce the craft or class of road conductors in their choice of a bargaining representative, was failing to per-

form its statutory duty; they deny that the practices complained of constitute in fact unlawful coercion. For further answer these defendants allege: That the Board determined on the basis of the facts furnished by plaintiff Order of Railway Conductors, but without a hearing, that the instant charges did not allege carrier coercion directly affecting and occurring during the actual conduct of the election and that the Board therefore, as a matter of law, had no jurisdiction to consider the validity of these charges on the merits; that the Board was not required by the Constitution or the Railway Labor Act to hold a hearing to make such a determination; that this Court has jurisdiction to consider the validity of these charges on the merits on evidence *de novo*; that in view of the fact that the Board has not passed upon and is not authorized to pass upon the validity of these charges on the merits, these defendants will stand neutral before this Court with respect to such issues.

ROBERT L. PIERCE

Special Assistant to the

Attorney General

Counsel for defendants

*National Mediation Board
and George A. Cook.*

TOM C. CLARK

Assistant Attorney General.

EDWARD M. CURRAN

United States Attorney.

I consent:

RUFUS G. POOLE

Counsel for plaintiffs.

May 11, 1943.

APPENDIX A

National Mediation Board
Washington

George A. Cook, Chmn.
Otto S. Beyer
David J. Lewis
Robert F. Cole, Secy.

In the matter of
REPRESENTATION OF EMPLOYEES
of the
PENNSYLVANIA RAILROAD
Road Conductors

Case No. R-972

Certification

Dec. 27, 1942

The services of the National Mediation Board were invoked by the Brotherhood of Railroad Trainmen to settle a dispute as to who may represent the following employees of the Pennsylvania Railroad, for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof:

Road conductors.

The records of the Board show that at the time application was received these employees were represented by the Order of Railway Conductors.

The Board assigned Mr. James P. Kiernan, Mediator, to investigate, and after finding that a dispute existed among the employees concerned, directed him to take a secret ballot to determine their choice, using an eligible list agreed to by representatives of the contesting organizations. Following is the result of the election as reported by Mediator Noonan, who was directed to count the ballots:

Number of employees voting for contesting organizations:

	For Brother- hood of Rail- road Trainmen	For Order of Railway Conductors	For Other Organ- izations or Individuals	Void Ballots	Number of Employees Eligible to Vote
Road Con- ductors	1680	1122	8	81	3283

On the basis of the investigation and report of election the National Mediation Board hereby certifies that the Brotherhood of Railroad Trainmen has been duly designated and authorized to represent the following craft or class of employees of the Pennsylvania Railroad, for the purposes of the Railway Labor Act:

Road conductors.

By order of NATIONAL MEDIATION BOARD.

Robert F. Cole
Secretary

IN THE
DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

ORDER OF RAILWAY CONDUCTORS
 OF AMERICA, et al., *Plaintiffs*,

v.

Civil Action
 No. 17,899

NATIONAL MEDIATION BOARD,
 BROTHERHOOD OF RAILROAD
 TRAINMEN, et al., *Defendants*.

**ANSWER TO MOTION FOR SUMMARY
 JUDGMENT**

Now comes the Brotherhood of Railroad Trainmen, by Bernard M. Savage and Alfred L. Bennett, their Attorneys, Answering Motion for Summary Judgment made by the Plaintiffs under Rule 56 of the Federal Rules of Civil Procedure and says:

1. That under Rule 56 of the Federal Rules of Civil Procedure, upon which the Plaintiffs rely, they are not entitled to summary judgment and injunction prayed in paragraph 2 of said motion, because Rule 56 contains no provision for injunctive relief in a motion for summary judgment.

2. That the Plaintiffs are not entitled to the relief asked in paragraph one, because, among other reasons, their active participation in the representation election as well as their subsequent course of action constitutes an abandonment and waiver.

3. That the National Mediation Board on December 27, 1942, certified the Brotherhood of Railroad Trainmen: "has been duly designated and authorized to represent the following craft or class of employees of the

Pennsylvania Railroad, for the purposes of the Railway Labor Act: Road Conductors", and that it is evident the Board carefully considered the alleged unfair labor practices and that it will appear by reference to Plaintiffs' Exhibit "H", the Board found the Order of Railway Conductors charges without merit (Plaintiffs' Exhibit "G"), stating on page 5 of its letter which was a reply to Exhibit "G": "If you have in mind a formal hearing at which the interested parties would be present, we find nothing in the matters alleged in your protest which falls within the purview of a formal hearing customarily held in connection with representation disputes", and which reply also considered the nature of certain charges and pointed out provisions of Section 3 may be made effective through the application of Section 10 of the Act and that the reply of the Board further pointed out—*with which this Defendant agrees*—that "where the question of representation is raised it is extremely difficult to negotiate rules until the representation question is settled", and that the Board found it was its duty to proceed with the investigation when its services had been properly invoked.

4. That a consideration of the Amended Bill of Complaint and Exhibits clearly shows that the alleged coercion and unfair labor practices are non-existent.

Attached is the affidavit of H. F. Sites, General Chairman of the Brotherhood of Railroad Trainmen for the Pennsylvania Lines East, setting forth the facts which this Defendant believes shows that charges made by the Plaintiffs are trivial, without merit, that the relief asked is for the purpose of delay and not made in good faith.

WHEREFORE, this Defendant prays that the Plaintiffs' Motion for Summary Judgment be denied.

BERNARD M. SAVAGE

521 Title Building
Baltimore, Maryland

ALFRED L. BENNETT,
Denrike Building
Washington, D. C.
*Attorneys for Defendant,
Brotherhood of Railroad
Trainmen.*

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

ORDER OF RAILWAY CONDUCTORS
OF AMERICA, et al., *Plaintiffs*,

v.

**Civil Action
No. 17,899**NATIONAL MEDIATION BOARD,
BROTHERHOOD OF RAILROAD
TRAINMEN, et al., *Defendants*.**AFFIDAVIT BY DEFENDANT BROTHERHOOD
OF RAILROAD TRAINMEN IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY JUDG-
MENT**CITY OF BALTIMORE
STATE OF MARYLAND

H. F. Sites, being duly sworn, deposes and says:

That he is the General Chairman of the Brotherhood of Railroad Trainmen for the Pennsylvania, Lines East, having acted in this capacity for more than three years; that the class of employees involved within the dispute come under the section of the Pennsylvania Railroad within his jurisdiction and that of U. D. Hartman, General Chairman of the Brotherhood of Railroad Trainmen, for the Pennsylvania, Lines West; that he is familiar with the allegations made by the plaintiffs and the matters and facts contained herein in denial thereof.

Answering plaintiffs' affidavit in the respective order of said allegations, this affiant says:

1. Admitted.

2. Does not have sufficient knowledge of the allegations therein contained to form a belief for the truth thereof and therefore neither admits nor denies the same.

3. Requires no answer but affiant refers to answer of the Brotherhood of Railroad Trainmen to plaintiffs' amended bill of complaint, to plaintiffs' exhibits and defendant Brotherhood of Railroad Trainmen's exhibits "A" to "G" inclusive, filed herewith, for a denial of plaintiffs' claims.

4. This affiant has no knowledge as to the plaintiffs' affiant's belief and therefore can neither admit nor deny the same but denies his conclusions.

5. Admitted.

6. Admits that at the time of Brotherhood of Railroad Trainmen invocation the Order of Railway Conductors was the duly accredited and recognized bargaining agency and representative for the class and craft of road conductors on the Pennsylvania Railroad, but says that for many years, because of the closeness of interests, the Order of Railway Conductors and Brotherhood of Railroad Trainmen, had jointly negotiated with the Pennsylvania Railroad regarding their respective contracts and that both the Brotherhood of Railroad Trainmen and the Order of Railway Conductors were parties to said contracts. (Plaintiffs' Exhibit "A".)

7. Admits that Exhibit "G" purports to be a copy of letter filed by the plaintiffs with the Mediation Board on October 28, 1942, and states said letter speaks for itself.

8. Does not have sufficient knowledge to either admit nor deny whether or not the Order of Railway Conductors requested the Board to hold a hearing, but says that the concluding sentence of exhibit "G", which purports to be a letter addressed to the Board dated October 28, 1942, states as follows: "We shall be pleased

to present further evidence in support of what we have here stated and request that we be afforded an opportunity to be heard".

9. Neither admits nor denies this paragraph but states Exhibit "G" speaks for itself.

10. Does not have sufficient knowledge to enable him to admit nor deny the allegations of this paragraph.

11. Admits that Exhibit "H" purports to be a true copy of the letter addressed by Robert F. Cole, Secretary, National Mediation Board to H. W. Fraser, President of the Order of Railway Conductors.

12. Neither admits nor denies the allegations of this paragraph and says the answer of the Board speaks for itself.

13. Does not have sufficient knowledge as to what the plaintiff affiant believes exhibit "H" shows, to either admit nor deny the same, but states exhibit "H" speaks for itself.

14. Does not have sufficient knowledge of the allegations of said paragraph to either admit nor deny the same, but admits he has no knowledge of such hearing.

15. Admitted and says the plaintiffs actively participated in said election.

16. Denies the allegations therein contained and says that the answer and exhibits speak for themselves.

17. Does not have sufficient knowledge of the belief of the plaintiff affiant to either admit nor deny his mental processes in this regard but denies the only question presented is one of law, as alleged.

18. Denied.

19. This affiant does not have sufficient knowledge of the allegations contained therein to either admit nor deny.

Affiant further says that he believes the striking out of the election and certification of the Mediation Board, both of which plaintiff, Order of Railway Conductors,

certified were conducted fairly and impartially and in which the plaintiff actively participated and made no application to this court to have stricken out until after a certification would be contrary to the intent and spirit of the Railway Labor Act and would leave approximately three thousand road conductors without a representative of their own choosing and would be productive of widespread unrest, chaos and confusion among said conductors.

Affiant further says that he is competent to testify as to the matters above stated; that he has personal knowledge of the facts to which he has sworn except those matters which he has stated upon belief.

WHEREFORE this affiant prays on behalf of the Brotherhood of Railroad Trainmen, one of the defendants, that the motion for summary judgment requested by the plaintiff, be denied.

H. F. SITES,

Affiant,

1011 City Centre Building,
Philadelphia, Pennsylvania.

Subscribed and Sworn to before me this twenty-fourth day of March, 1943.

Notary Public.

EXHIBIT "D"

NATIONAL MEDIATION BOARD CASE NO. R-972 AGREEMENT

It is hereby agreed by and between the Order of Railway Conductors and the Brotherhood of Railroad Trainmen, parties to the National Mediation Board's Case No. R-972, known as representation dispute among Road Conductors, employees of the Pennsylvania Railroad, by their respective duly authorized and designated representatives, THAT,

1. To settle the dispute, should the National Mediation Board find that a dispute exists among the Road Conductors, employees of the Pennsylvania Railroad, and order an election, the eligible list of such Road Conductors entitled to vote in such an election shall be:

- (a) Such Road Conductors as held regular assignments during the last half of September 1942,
- (b) Such Road Conductors as were assigned to the regular Extra Conductors list, during the last half of September 1942,
- (c) Such Road Conductors as worked a preponderance of time as Road Conductor, during the months of April, May, June, July, August and September, 1942, (those working an equal amount in such months, in the capacity of Road Conductor and in other occupations, shall not be eligible to vote),
- (d) Those who were on leave of absence, sick or injured leave, or other authorized leave during September 1942, provided their seniority would give them the right to qualify under (a) or (b) above,
- (e) Those in the armed forces of the United States, provided they qualify under (a), (b) and (d) above.

2. Those who qualify under the provisions above, but have since been dismissed, resigned, retired or promoted shall not be eligible to vote;

3. The parties hereto, shall appoint one man each to make a study of the work performed by the Conductors in the "Altoona Yard and Branch Pool", who will make a joint report to the Mediator and the eligibility of Conductors will be decided later.

4. Should a ballot be taken, the name of the Order of Railway Conductors shall be first on the ballot.

5. That a list prepared in accordance with this agreement, from the payroll and other records of the Pennsylvania Railroad, shall constitute the eligible list, and no changes shall be made in such list except upon proof of error in the list.

Signed this 20th day of November 1942, at Philadelphia, Pa.

For ORDER OF RAIL-
WAY CONDUCTORS

By B. C. JOHNSON
By C. E. KALKMAN
By J. E. MAGILL

For BROTHERHOOD OF
RAILROAD TRAINMEN

By W. P. KENNEDY
By H. F. SITES
By U. D. HARTMAN

Witness: JAMES P. KIERNAN

Mediator.

EXHIBIT "E"

Case No. R-972, Representation Dispute Among
Road Conductors, Employees of the Pennsylvania Rail-
road

Philadelphia
December 2, 1942

The undersigned parties to representation dispute among Road Conductors, employees of the Pennsylvania Railroad have inspected and hereby agree to the list of eligible voters to be used in conducting an election by the National Mediation Board in its case file R-972, as prepared by Mediator J. P. Kiernan. It is agreed that changes in the eligible list of voters as referred to herein

will be made only to correct error as provided in the rules governing the election.

For: ORDER OF RAIL-
WAY CONDUCTORS

By B. C. JOHNSON
M. H. BARNEY

For: BROTHERHOOD OF
RAILROAD TRAINMEN

By W. P. KENNEDY
H. F. SITES

Witnessed:

JAMES P. KIERNAN

Mediator

EXHIBIT "F"

NATIONAL MEDIATION BOARD WASHINGTON

REPORT OF ELECTION RESULTS, R-972

National Mediation Board,
Washington, D. C.

In accordance with instructions, a secret ballot was taken to settle the representation dispute among the Road Conductors employees of the Pennsylvania Railroad.

Ballots were distributed to and voted by the said employees from December 5, 1942, to December 19, 1942, said ballots being collected and counted by a representative of the National Mediation Board in the presence of the party observers.

The mediator and the observers met in the City of Philadelphia, Pennsylvania, on the 19th day of December, 1942, and jointly opened, counted, and allocated all the ballots in their possession, and, as evidence thereof prepared the following tabulation to which the

party observers attest hereon as to the secrecy, fairness and accuracy of all ballots cast:

Number of employes on list of eligible voters	3283
Number voting for representation by the Order of Railway Conductors-----	1122
Number voting for representation by the Brotherhood of Railroad Trainmen-----	1680
Number voting for other organization or in- dividual -----	8
Number of void ballots not allocated to any party -----	81

In compliance with paragraph 19 of the Board's instructions, I hereby report the foregoing results to be true and the election completed.

Signed at Philadelphia, Pennsylvania, this 19th day of December, 1942.

Board's Certification should be mailed to:

Mr. H. A. Enochs, Ch. of Personnel, Penn. RR, Philadelphia, Pa.

Mr. H. W. Fraser, Pres. ORC, Cedar Rapids, Iowa.

Mr. A. H. Whitney, Pres. BRT, BRT Bldg., Cleveland, Ohio.

J. JOSEPH NOONAN,

Mediator, National Mediation Board.

ATTEST:

We, the party observers, present at the counting and tabulation of the votes in the above mentioned case, hereby certify that the election reported above was conducted in a fair and impartial manner, and that the secrecy of the ballots was kept inviolate and the count and tabulation is accurate and complete.

Signed at Philadelphia, Pa., this 19th day of December, 1942.

B. C. JOHNSON

*Party Observer, for the
Order of Railway
Conductors.*

C. E. KALKMAN

O. R. C.

J. E. MAGILL

O. R. C.

W. P. KENNEDY

*Party Observer, for the
Brotherhood of Rail-
road Trainmen.*

H. F. SITES

B. R. T.

U. D. HARTMAN

B. R. T.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

ORDER OF RAILWAY CONDUCTORS
OF AMERICA, et al., *Plaintiffs,*

v.

NATIONAL MEDIATION BOARD, et al.,
*Defendants.*Civil
No. 17,899**JUDGMENT AND ORDER**

The above-entitled case, having come on for hearing on plaintiffs' motion for a summary judgment; and the Court having considered the motion, defendants' answers thereto, affidavits of the parties, the pleadings and oral argument of counsel; and the Court being of the opinion that there is no genuine issue as to any material fact with respect to the relief requested under the motion for summary judgment, but the Court being of the further opinion that the facts admitted as true and all other facts alleged in the complaint and amended complaint of the plaintiffs, do not establish that the plaintiffs have any cause of action; it is by the Court this 11th day of June, 1943,

ADJUDGED, ORDERED and DECREED:

1. That the plaintiffs' motion for a summary judgment be and the same is hereby denied;
2. That the complaint and the amended complaint be and the same are hereby dismissed;
3. That costs are awarded to defendants.

DANIEL W. O'DONAGHUE,

June 11, 1943.

Justice.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

ORDER OF RAILWAY CONDUCTORS
OF AMERICA, et al., *Plaintiffs,*

v.

NATIONAL MEDIATION BOARD, et al.,
*Defendants.*Civil
No. 17,899**NOTICE OF APPEAL**

Notice is hereby given this 14th day of June, 1943, that the Order of Railway Conductors of America, et al. hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 11th day of June, 1943, in favor of defendants against said plaintiffs.

RUFUS G. POOLE*Attorney for Plaintiffs*

815 15th Street, N. W.

Washington, D. C.

ALFRED L. BENNETT

1010 Vermont Avenue, N. W.

Washington, D. C.

ROBERT L. PIERCE

Department of Justice

Washington, D. C.

R. A. BOGLEY

901 Hibbs Building

Washington, D. C.

[fol. 92] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Dec. 21, 1943. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, OCTOBER TERM, 1943

No. 8571

ORDER OF RAILWAY CONDUCTORS, et al., Appellants,

NATIONAL MEDIATION BOARD, et al., Appellees

MOTION TO DISMISS APPEAL AS TO MEDIATION BOARD AND ITS MEMBERS FOR LACK OF JURISDICTION

Now comes the National Mediation Board and its individual members, appellees herein, and move this Court to dismiss the appeal as against them.

The ground of this motion is that, so far as they are concerned, neither the District Court of the United States for the District of Columbia nor this Court on appeal has jurisdiction over the subject matter involved in the present case. The present suit, so far as it involves the Board and its members, is a suit in equity to review and set aside a certification of the Board issued pursuant to section 2, ninth, of the Railway Labor Act (45 U. S. C. sec. 152, ninth). The Supreme Court's decision issued on November 22, 1943, subsequent to the taking of this appeal, in *Switchmen's Union of North America v. National Mediation Board*, 64 S. Ct. 98, clearly holds that the District Court and this Court have no jurisdiction to review certifications issued by the National Mediation Board. No motion for rehearing in the [fol. 93] *Switchmen's Union* case has been filed in the Supreme Court, and under the rules of that Court, the time for filing such a motion has now expired.

WHEREFORE: It is respectfully prayed that the appeal be dismissed as against these appellees at appellants' costs.

Robert L. Pierce, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.,
Counsel for the National Mediation Board and its members.

Wendell Berge, Assistant Attorney General.

PROOF OF SERVICE

Whereby certify that I served a copy of the above motion upon each of the following counsel this 20th day of December, 1943, by mailing them a copy thereof:

Rufus G. Poole, Esquire, William A. Clineburg, Esquire, 815 15th St., N. W., Washington, D. C.;

V. C. Shurtleworth, Esquire, 1113 Merchants Bank Building, Cedar Rapids, Iowa;

R. Aubrey Bogley, Esquire, Hibbs Building, Washington, D. C.;

Alfred L. Bennett, Esquire, Denrike Building, 1010 Vermont Ave., Washington, D. C.;

Bernard M. Savage, Esquire, 521 Title Building, Baltimore, Maryland.

Robert L. Pierce, Special Assistant to the Attorney General.

[fol. 94] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Feb. 3, 1944. Joseph W. Stewart, Clerk.

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 8571

ORDER OF RAILWAY CONDUCTORS OF AMERICA, et al.,
Appellants,

v.

NATIONAL MEDIATION BOARD, et al., Appellees

MOTION FOR LEAVE TO FILE THE FOLLOWING ANSWER TO THE
"MOTION TO DISMISS APPEAL AS TO THE MEDIATION BOARD
AND ITS MEMBERS FOR LACK OF JURISDICTION"

Now come the appellants herein and move this Court for leave to file the following answer to the motion to dismiss this appeal as to the National Mediation Board and its members, which motion was filed December 20, 1943.

The appellants have not heretofore filed an answer opposing the dismissal of this appeal as to the National Mediation Board and its members, because it has been assumed that under the Supreme Court's decisions of November 22, 1943,

in *General Committee of Adjustment of the Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas R. Co., et al.*, 64 S. Ct. 146; *General Committee of Adjustment of the Brotherhood of Locomotive Engineers v. Southern Pacific Company, et al.*, and *General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen v. General Committee of Adjustment of the Brotherhood of Locomotive Engineers, et al.*, 64 S. Ct. 142, the Federal Courts have no jurisdiction to inquire into the validity of any election conducted, or certification issued by the National Mediation Board in pursuance of its duties under Section 2, Ninth, of the Railway Labor Act (Act of May 20, 1926, 44 Stat. 577, as amended by the Act of June 21, 1934, 48 Stat. 1185, U. S. C. Title 45, Secs. 151 et seq.).

The appellants are presently of the opinion, however, that the said motion to dismiss this appeal as to the National Mediation Board and its members should be denied for two reasons: (1) It is not believed that the Supreme Court's decisions in the above-cited cases may properly be construed to mean that the Federal Courts never, under any circumstances, have jurisdiction to review action taken by the National Mediation Board under the purported authority of Section 2, Ninth, of the Railway Labor Act. (2) It is not clear that the decisions in the cited cases represent the present views of the Supreme Court, inasmuch as those cases were decided by a bare 4-3 majority, and inasmuch as Mr. Justice Rutledge dissented from the order entered January 10, 1943, denying a petition for rehearing which had been filed in the case of *Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees v. United Transportation Service Employees of America*, No. 435, indicating that he does not necessarily subscribe to the views expressed by the majority in the decided cases.

WHEREFORE, it is respectfully prayed that the appellants be permitted to file the foregoing in answer to the motion to dismiss this appeal as to the Mediation Board and its members.

Rufus G. Poole, William A. Clineburg, 815 15th Street, N. W., Washington, D. C., V. C. Shuttleworth, Merchants National Bank Bldg., Cedar Rapids, Iowa, Attorneys for Appellants.

[fol. 96] The National Mediation Board and its individual members, appellees herein, hereby consent to the filing of

the foregoing answer to the motion filed December 20, 1943, by the National Mediation Board and its individual members.

Robert L. Pierce, Special Assistant to the Attorney General, Department of Justice, Washington, D. C., Counsel for the National Mediation Board and its Members.

I hereby certify that I personally served a copy of the foregoing motion upon each of the following counsel this 2nd day of February 1944.

Robert L. Pierce, Esquire, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.;

R. Aubrey Bogley, Esquire, McKenney, Flannery & Craighill, 901 Hibbs Building, Washington, D. C.;

Alfred L. Bennett, Esquire, 1010 Vermont Avenue, Washington, D. C.

Rufus G. Poole, Attorney for Appellants, 815 15th Street, N. W., Washington, D. C.

[fol. 97] [Stamp:] United States Court of Appeals for the District of Columbia, Filed Jan. 10, 1944. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, OCTOBER TERM, 1943

No. 8571

ORDER OF RAILWAY CONDUCTORS, et al., Appellants

vs.

NATIONAL MEDIATION BOARD, et al., Appellees

Motion to Dismiss Appeal as to the Pennsylvania Railroad Company for Lack of Jurisdiction

Now comes the Pennsylvania Railroad Company, one of the appellees herein, and moves this Court to dismiss the appeal as against it on the ground that neither the District Court of the United States for the District of Columbia nor this Court on Appeal has jurisdiction over the subject matter involved in this case.

The present proceeding is a suit in equity for declaratory and injunctive relief brought by the appellants, Order of Railway Conductors, against the appellees, Pennsylvania Railroad Company, Brotherhood of Railroad Trainmen, and the National Mediation Board. The relief prayed for includes a declaration that certain provisions in a collectively bargained labor agreement entered into by the Pennsylvania Railroad Company and the Brotherhood of Railroad Trainmen were illegal and void, a declaration that the Order of Railway Conductors was the accredited representative of the craft of road conductors on the Pennsylvania Railroad, an order against the Pennsylvania Railroad Company for [fol. 98] bidding negotiations with the Brotherhood of Railroad Trainmen in regard to working conditions of road conductors, an order requiring the Pennsylvania Railroad Company to negotiate with the Order of Railway Conductors in regard to the working conditions of road conductors, an injunction against the Pennsylvania Railroad Company forbidding it to directly or indirectly coerce, influence or interfere with the craft of road conductors in their choice of a representative under the Railway Labor Act, and finally, an order vacating and setting aside a certification issued by the National Mediation Board to the effect that the Brotherhood of Railroad Trainmen is the duly designated and authorized representative of road conductors, and an order forbidding the Board to commence any proceedings for the ascertainment of the bargaining representative of road conductors until the Board shall have found that the Pennsylvania Railroad Company has ceased to interfere with, influence or coerce road conductors in their choice of a bargaining representative.

The case against the appellee, Pennsylvania Railroad Company, constitutes a dispute with respect to whether the appellants, Order of Railway Conductors, or the appellee, Brotherhood of Railroad Trainmen, possesses exclusive jurisdiction to negotiate with respect to the matters contained in the collectively bargained labor agreement, referred to above, between the Company and the Brotherhood of Railroad Trainmen. In the case of *General Committee of Adjustment of the Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas R. Co., et al.*, 64 S. Ct. 146, and the case of *General Committee of Adjustment of the Brotherhood of Locomotive Engineers v. Southern Pacific Com-*

pany et al., and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen v. General [fol. 99] Committee of Adjustment of the Brotherhood of Locomotive Engineers, et al., 64 S. Ct. 142, decided November 22, 1943, the Supreme Court of the United States held that such jurisdictional disputes are not justiciable and are consequently not within the jurisdiction of the Federal courts.

The only remaining portion of the case against the appellee, Pennsylvania Railroad Company, is that involving charges to the effect that that Company interfered with, influenced and coerced road conductors in their choice of a representative under the Railway Labor Act. As appears from the record, these identical charges were submitted to the National Mediation Board by the appellants, Order of Railway Conductors, (see Exhibit "G" to the Complaint, pp. 23-33 of Appendix to the Brief of appellants in this Court). The National Mediation Board refused to take any action with respect to those charges for the reasons set forth in Exhibit "H" to the Complaint (pp. 33-40 of Appendix to the Brief of appellants in this Court) and for the reasons set forth in the Brief on behalf of the National Mediation Board before this Court at pp. 13 to 16 inclusive thereof. The National Mediation Board having considered and dismissed the charges made by the appellants, Order of Railway Conductors, against the appellee, Pennsylvania Railroad Company, neither the District Court of the United States for the District of Columbia nor this Court on Appeal has any jurisdiction to review the said determination of the National Mediation Board in the light of the holding of the United States Supreme Court in the case of *Switchmen's Union of North America, et al., v. National Mediation Board, et al.*, 64 S. Ct. 98, decided November 22, 1943.

The appellee, Pennsylvania Railroad Company, urges as a further ground for its motion herein, the fact that the case against the appellee, Pennsylvania Railroad Company, has become moot. The appellee, National Mediation Board, [fol. 100] has, under date of December 20, 1943, filed with this Court a motion to dismiss the appeal with respect to it, and the appellants, Order of Railway Conductors, in their answer filed January 3, 1944, to a similar motion filed by the appellee, Brotherhood of Railroad Trainmen, declared that

it is "not opposing the pending motion of appellees, National Mediation Board, and its members, to dismiss the appeal as against those appellees." Consequently, relief is no longer sought by the appellants against the Board and the certification by the Board of the appellee, Brotherhood of Railroad Trainmen, as the representative of road conductors on the Pennsylvania Railroad is accepted. Such being the case, the Court could no longer grant any of the relief requested by the appellants, Order of Railway Conductors, against the appellee, Pennsylvania Railroad Company. The provisions in the agreement between the Pennsylvania Railroad Company and the Brotherhood of Railroad Trainmen could not be declared illegal and void since the latter organization now represents all of the employees involved, nor could the appellants, Order of Railway Conductors, be declared the designated representative of road conductors contrary to the certification of the National Mediation Board. Furthermore, the Court could not enjoin the appellee, Pennsylvania Railroad Company, from negotiating with the appellee, Brotherhood of Railroad Trainmen, with respect to the working conditions of road conductors, and could not order and direct the appellee, Pennsylvania Railroad Company, to negotiate with the appellants, Order of Railway Conductors, with respect to the working conditions of road conductors, since any such order would be contrary to the certification of the Mediation Board now apparently accepted by the appellants, Order of Railway Conductors. Furthermore, even though the Court were to uphold the charges of appellants, Order of Railway Conductors, that [fol. 101] the appellee, Pennsylvania Railroad Company, engaged in activities constituting interference, influence and coercion of road conductors in their choice of a representative, the requested injunctive relief with respect thereto could not now be granted at the suit of appellants, Order of Railway Conductors, because the said road conductors are now represented, for purposes of collective bargaining, by the appellee, Brotherhood of Railroad Trainmen.

No motion for rehearing in the cases cited herein has been filed in the Supreme Court of the United States and, under the rules of that Court, the time for the filing of such a motion has now expired and the decisions therein have become final.

Wherefore, it is respectfully moved that the appeal in this case be dismissed with respect to the appellee, Pennsylvania Railroad Company, at appellants' costs.

(Signed) John Dickinson, Guy W. Knight, David L. Wilson, 1740 Broad St. Station Bldg., Philadelphia, Pa.; R. Aubrey Bogley, Hibbs Bldg., Washington, D. C., Counsel for Appellee, The Pennsylvania Railroad Company.

[fol. 102] McKenney, Flannery & Craighill, Hibbs Building, Washington, D. C., Of Counsel.

Proof of Service

I hereby certify that I served a copy of the above motion upon each of the following counsel this 10th day of January, 1944, by mailing them a copy thereof:

Rufus G. Poole, Esquire,
William A. Clineburg, Esquire,
815 15th Street, N. W.,
Washington, D. C.

V. C. Shuttleworth, Esquire,
1113 Merchants Bank Building,
Cedar Rapids, Iowa.

Alfred L. Bennett, Esquire,
Denrike Building, 1010 Vermont Ave.,
Washington, D. C.

Bernard M. Savage, Esquire,
521 Title Building,
Baltimore, Maryland.

Robert L. Pierce, Esquire,
Special Assistant to the Attorney General,
Department of Justice,
Washington, D. C.

(Signed) R. Aubrey Bogley, Attorney for Appellee,
The Pennsylvania Railroad Company, Hibbs Building,
Washington, D. C.

[fol. 103] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Jan. 13, 1944. Joseph W. Stewart, Clerk.

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 8571

ORDER OF RAILWAY CONDUCTORS OF AMERICA, ET AL., Appellants,

v.

NATIONAL MEDIATION BOARD, ET AL., Appellees

ANSWER TO MOTION TO DISMISS APPEAL AS TO THE PENNSYLVANIA RAILROAD COMPANY

Now come the appellants in answer to motion of appellee Pennsylvania Railroad Company to dismiss this appeal for lack of jurisdiction, and state that this motion should be denied for reasons set forth below.

The motion requests dismissal on the grounds that the court has no jurisdiction over the subject matter involved in this case.

In support of this contention, the Penn RR purports to analyze those portions of the complaint and prayer for relief which relate to it. This analysis is misleading.

The complaint contains three counts.

Counts I and II allege *inter alia* that the appellee Penn RR violated the provisions of Section 2, Second, Third and Fourth, of the Railway Labor Act by committing acts in pursuance of an unlawful plan which influenced, interfered with and coerced the road conductors in their choice of a bargaining representative and which interfered with the organizing activities of the appellant Order of Railway [fol. 104] Conductors of America, and that appellee Brotherhood of Railway Trainmen conspired and cooperated with the Penn RR in the commission of the aforesaid acts. (See paras. 24-34, incl., Appellants' Appendix 14-17.)

Count III was added to the original bill by way of amendment at the time the National Mediation Board and its members were made party defendants. It charges the National Mediation Board with violating the Railway Labor Act in refusing and failing to investigate certain al-

leged acts of influence, interference and coercion by Appellee Penn RR among its road conductor employees, and in failing and refusing to determine whether a free election could be held at that time to designate a bargaining representative for such employees.

Appellee Penn RR contends on page 3 of its motion "that the Board considered and dismissed the charges made by the appellants," and argues that as a consequence of such consideration that neither this court nor the District Court has jurisdiction to consider these charges "apparently for any purpose" and cites *Switchmen's Union of North America, et al. v. National Mediation Board*, 64 S. Ct. 95, as authority for this conclusion.

While we believe the point to be wholly irrelevant, it is a fact that the charges of carrier interference were never considered by the Board, as is shown by the pleadings upon which the questions now before this Court must be decided. Paragraph 40 of the amended complaint states

"that the Board rules that it had 'no jurisdiction' or 'power' to consider the charges of the ORC under authority granted it by the Railway Labor Act; that the provisions of Section 2, Ninth, which require the Board 'to insure the choice of representatives by the [fol. 401] employees without interference, influence, and coercion by the carrier,' limited the power of the Board with respect to carrier interference to that occurring at the time of taking a secret ballot and in a prescribed geographical area (Appellants' Appendix, p. 18).

See also Exhibit H of Appellants' Appendix, page 33, paragraph commencing at bottom of page 38 and ending on page 39, which shows that the Board declined to consider the charges of carrier interference because it thought it lacked jurisdiction.

The Penn RR in answering paragraph 40 of the complaint, stated that it was without knowledge or information sufficient to form a belief as to the truth of the allegations (Appellants' Appendix, p. 57).

Further, the amended answer of the National Mediation Board stated

"that the Board, therefore, as a matter of law, had no jurisdiction to consider the validity of these charges

on the merits * * * that in view of the fact that the Board has not passed upon and is not authorized to pass upon the validity of these charges on the merits, these defendants will stand neutral before this court with respect to such issues" (Appellants' Appendix 74).

But even assuming that the Board did consider these charges of carrier interference, such consideration as it gave them was in connection with the request of the ORC that the representation election be postponed. This Court is not being asked here to consider the charges of interference against the Penn RR for the purpose of reviewing the Board, but, as is shown by the pleadings, for the purpose of determining whether such charges, if proved, constitute a violation of the provisions of Section 2, Third and Fourth, of the Railway Labor Act for which judicial relief may be granted. The decision in the *Switchmen's* suit, *supra*, [vol. 106] cited by appellee for the proposition that the Court has no jurisdiction over the subject matter obviously has no application. That decision did no more than deprive the Court of jurisdiction to review the acts of the Board in connection with the certification of bargaining representatives. The decisions in *Switchmen's Union of North America, et al. v. National Mediation Board, et al.*, *supra*, at page 97, and *General Committee of Adjustment v. M-K-T*, 64 S. Ct. 146, at p. 149, both acknowledge that the prohibitions of Section 2, Third and Fourth, of the Railway Labor Act are capable of judicial enforcement.

Appellee Penn RR also contends that the case is moot as against it and advance the argument that the Court may no longer grant any of the specific relief requested. An examination of all the complaint and prayer for relief will show that this contention is baseless. The relief sought in paragraph (2)(b), (8) and (9) of the prayer may still appropriately be granted (Appellants' Appendix, pp. 20-22). Employee representation under the Railway Labor Act is not a static thing. While the BRT is the certified representative of the craft of conductors on the Penn RR today, the appellants ORC have a right under the Act to challenge this representation at any time and seek another election, and the appellants are entitled to a declaration as to whether the offending conduct of the Penn RR was violative of the Railway Labor Act and to

injunctive relief restraining the Penn RR, if it is found so to be.

Moreover, the conduct of the carrier complained of in paragraphs 24-33, inclusive, constitutes a violation of the provisions of Section 2, Fourth, of the Railway Labor Act which prohibits a carrier from influencing or coercing employees in an effort to induce them to join or remain or not to join or remain members of any labor organization. This organizational right is unrelated to the right of union representation and the Courts have jurisdiction to enforce it. See *Clerks* case, 281 U. S. 548, and *Virginian* case, 300 U. S. 515.

This motion calls for a final disposition of the case on grounds which have never been analyzed by the parties in written briefs or presented by oral argument. Appellants have a motion pending before this Court asking leave to file a supplemental brief for the purpose of considering the decisions in the *Switchmen's Union* and *M-K-T* cases and their application to the facts in the subject case. Appellants urge this Court to overrule the motions of appellee Penn RR and BRT to dismiss this case for want of jurisdiction and mootness with directions that the questions raised by the motions be presented in supplemental briefs so that the Court may have the benefit of a full and reasoned argument on the questions involved in the pending motions.

(S.) Rufus G. Poole, William A. Clineburg, 815
15th Street, N. W., Washington, D. C.; V. C.
Shuttleworth, Merchants National Bank Bldg.,
Cedar Rapids, Iowa, Attorneys for Appellants.

[fol. 108] I hereby certify that copies of the foregoing Answer to Motion to Dismiss Appeal as to the Pennsylvania Railroad Company in the above-entitled cause were mailed, postage prepaid, this 13th day of January 1944 to the following attorneys for appellees.

R. Aubrey Bogley, Esquire, McKenney, Flannery
& Craighill, 901 Hibbs Building, Washington, D. C.

Alfred L. Bennett, Esquire, 1010 Vermont Avenue,
Washington, D. C.

Bernard M. Savage, Esquire, 521 Title Building,
Baltimore, Maryland.

Robert L. Pierce, Esquire, Special Assistant to the
Attorney General, Department of Justice, Washington,
D. C.

(S.) Rufus G. Poole, Attorney for Appellants, 815
15th Street, N. W., Washington, D. C.

[fol. 109] [Stamp:] United States Court of Appeals for
the District of Columbia. Filed December 29, 1943.
Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA, OCTOBER TERM, 1943

No. 8571.

ORDER OF RAILWAY CONDUCTORS, et al., Appellants,

v.

NATIONAL MEDIATION BOARD, et al., Appellees

MOTION TO DISMISS APPEAL AS TO BROTHERHOOD OF RAILROAD
TRAINMEN FOR LACK OF JURISDICTION

Now comes the Brotherhood of Railroad Trainmen, one
of the appellees herein and moves this Court to dismiss the
appeal as against them on the ground that neither the Dis-
trict Court of the United States for the District of Colum-
bia nor this Court on appeal has jurisdiction over the sub-
ject matter involved in the case.

This suit invokes the equity jurisdiction of this Court
for declaratory and injunctive relief and seeks, inter alia,
to set aside the certification of the National Mediation
Board pursuant to section 2, Ninth of the Railway Labor
Act, 45 U. S. C. section 152, that the appellee, Brotherhood
of Railroad Trainmen, is entitled to represent the class or
craft of road conductors and asking for injunctive relief
against the Board and its members from the holding of
further elections. The Mediation Board, under date of De-
cember 20, 1943, filed a motion to dismiss the appeal as to
the Board and its members. The case of Switchmen's
Union of North America, et al. v. National Mediation
Board, et al. 64 S. Ct. 98, decided by the Supreme Court of

the United States on November 22, 1943, clearly denied jurisdiction to the courts in proceedings had before the National Mediation Board.

The appellant's bill of complaint, insofar as it involves [fol. 110] this appellee, further asks that certain paragraphs of an alleged agreement made between the appellees, Pennsylvania Railroad and Brotherhood of Railroad Trainmen, be declared null and void as infringing on the appellants' jurisdiction. The Supreme Court of the United States, subsequent to this appeal, in its decision dated November 22, 1943, in the cases of General Committee of Adjustment of Brotherhood of Locomotive Engineers for Missouri-Kansas-Texas R. R. v. Missouri-Kansas-Texas R. Co. et al., 64 S. Ct. 146, and General Committee of Adjustment of Brotherhood of Locomotive Engineers for Pacific Lines of Southern Pac. Co. v. Southern Pac. Co., et al. and General Grievance Committee of Brotherhood of Locomotive Firemen and Enginemen v. General Committee of Adjustment of Brotherhood of Locomotive Engineers for Pacific Lines of Southern Pac. Co., et al., 64 S. Ct. 112, stated that neither the District Court nor this Court had any jurisdiction in controversies of this nature and that the matter was not justiciable.

No motion for rehearing in the Supreme Court cases referred to has been filed and the time for filing these motions having expired, said decisions are now final.

Wherefore it is respectfully prayed that the appeal be dismissed as against this appellee at appellants' cost.

Bernard M. Savage, Alfred L. Bennett, Attorneys
for appellee, Brotherhood of Railroad Trainmen.

[fol. 111]

PROOF OF SERVICE

I hereby certify that I served a copy of the above motion upon each of the following counsel this 28th day of December, 1943, by mailing them a copy thereof:

Rufus G. Poole, Esquire, 815 15th St., N. W., Washington, D. C.

V. C. Shurtleworth, Esquire, 1113 Merchants Bank Building, Cedar Rapids, Iowa.

R. Aubrey Bogley, Esquire, Hibbs Building, Washington, D. C.

Bernard M. Savage, Attorney for Appellee, Brotherhood of Railroad Trainmen.

[fol. 112]. [Stamp:] United States Court of Appeals for the District of Columbia. Filed January 3, 1944. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 8571

ORDER OF RAILWAY CONDUCTORS OF AMERICA, et al., Appellants,

v.

NATIONAL MEDIATION BOARD, et al., Appellees.

ANSWER TO MOTION TO DISMISS APPEAL AS TO BROTHERHOOD OF RAILROAD TRAINMEN

Now come the appellants in answer to motion of appellees Brotherhood of Railroad Trainmen, to dismiss this appeal for lack of jurisdiction and state that this motion should be denied for reasons hereinafter set forth.

The motion requests dismissal with respect to appellees BRT on the grounds that the court has no "jurisdiction over the subject matter involved in the case." As authority for this contention, the motion refers the court to the recently-decided Supreme Court cases of *Switchmen's Union of North America, et al., v. National Mediation Board, et al.*, 64 S. Ct. 95; *General Committee of Adjustment of Brotherhood of Locomotive Engineers for M-K-T R. R. v. M-K-T R. Co., et al.*, 64 S. Ct. 146; and *General Committee of Adjustment of Brotherhood of Locomotive Engineers for Pacific Lines of Southern Pac. Co., v. Southern Pac. Co., et al.*, 64 S. Ct. 142.

Appellants contend that an examination of all the allegations contained in the bill of complaint and the cases cited [fol. 113] by these appellees, does not support the proposition that the courts do not have jurisdiction over any part of the subject matter of the suit which relates to these appellees.

The complaint contains three counts.

Counts I and II allege *inter alia* that the appellee Pennsylvania Railroad Company violated the provisions of Section 2, Second, Third and Fourth, of the Railway Labor Act by committing acts in pursuance of an unlawful plan which

influenced, interfered with and coerced the road conductors in their choice of a bargaining representative and which interfered with the organizing activities of the appellant Order of Railway Conductors of America, and that appellees BRT conspired and cooperated with the Pennsylvania in the commission of the aforesaid acts (see paras. 24-34, inclusive, Appellants' Appendix 14-17).

Count III was added to the original bill by way of amendment at the time the National Mediation Board and its members were made party defendants. It charges the National Mediation Board with violating the Railway Labor Act in refusing and failing to investigate certain alleged acts of influence, interference and coercion by appellee Pennsylvania among its road conductor employees, and in failing and refusing to determine whether a free election could be held at that time to designate a bargaining representative for such employees. The court was requested to set aside an election and certification under which the representative rights for the craft of road conductors on the Pennsylvania were transferred from the appellants ORC to the appellees BRT (Appellants' Appendix 17-20).

The *Switchmen's* case, *supra*, held that the courts do not have jurisdiction to review the acts of the Mediation Board in connection with the certification of a bargaining representative (except perhaps in the situation presented in the *Virginian Ry.* case. See last paragraph of majority decision in *Switchmen's* decision.) Because of this decision, appellants are not opposing the pending motion of appellees National Mediation Board and its members to dismiss the appeal as against those appellees.

There is nothing, however, in the *Switchmen's* decision nor in the other decisions cited which suggests that the courts do not have jurisdiction over the subject matter of these allegations of Counts I and II which charge the Pennsylvania with influencing, interfering and coercing the craft of road conductors in their choice of a bargaining representative and in interfering with the organizational activities of the ORC. In fact, there is much in the opinions of these cases which suggests that the contrary is true.

While no specific relief against the acts of the BRT is requested in the complaint, it is submitted that under Rules 19 and 20 of the Federal Rules of Civil Procedure the BRT

as a result of the cases cited. In this connection, the court is referred to allegations 25-34, inclusive, Appellants' Appendix 14-16.

This case is before the court on appeal for a determination of the question of whether the several allegations of the complaint set forth any claim upon which relief can be granted. See Appellants' Appendix 89. The motion of appellees BRT seeks a premature determination of this issue as against them, without giving the court the benefit of all briefs and oral argument.

[fol. 115] Wherefore, it is respectfully prayed that this motion for dismissal be denied.

Rufus G. Poole, William A. Clineburg, 815 15th Street, N. W., Washington, D. C.; V. C. Shuttleworth, Merchants National Bank Bldg., Cedar Rapids, Iowa, Attorneys for Appellants.

I hereby certify that copies of the foregoing Answer to Motion to Dismiss Appeal as to Brotherhood of Railroad Trainmen in the above-entitled cause were mailed, postage prepaid, this 3rd day of January, 1944, to the following attorneys for appellees.

R. Aubrey Bogley, Esquire,
McKenney, Flannery & Craighill
901 Hibbs Building
Washington, D. C.

Alfred L. Bennett, Esquire
1010 Vermont Avenue
Washington, D. C.

Bernard M. Savage, Esquire
521 Title Building
Baltimore, Maryland

Robert L. Pierce, Esquire
Special Assistant to the Attorney General
Department of Justice
Washington, D. C.

Rufus G. Poole, Attorney for Appellants, 815 15th Street, N. W., Washington, D. C.

[fol. 116] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Jan. 3, 1944. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 8571

ORDER OF RAILWAY CONDUCTORS OF AMERICA, et al., Appellants
vs.

NATIONAL MEDIATION BOARD, et al., Appellees

Motion for Leave to File Supplemental Brief

Now come appellants herein and move this court for leave to file a supplemental brief in this case on or before January 22, 1944; and for leave for the appellees, or any of them, should they so elect, to file a supplemental brief in reply thereto at any time within twenty days after the filing of a supplemental brief by appellants.

The ground for this motion is that the Supreme Court issued decisions on November 22, 1943, subsequent to the taking of this appeal and the filing of briefs herein, in *Switchmen's Union of North America v. National Mediation Board*, 64 S. Ct. 25, and *General Committee of Adjustment of the Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas Railroad Company, et al.*, 64 S. Ct. 146, construing vital provisions of the Railway Labor Act, the statute under which this suit is being prosecuted, which should be considered by this court in deciding the issues of this case.

This motion is not filed in opposition to the motion of the National Mediation Board and its individual members Appellees herein, to dismiss this appeal as against these particular appellees, nor for the purpose of delaying the action of this court on that motion.

Rufus G. Poole, William A. Clineburg, 815 15th Street, N. W., Washington, D. C. (Signed) V. C. Shuttlesworth, Merchants National Bank Building, Cedar Rapids, Iowa, Attorneys for Appellants.

Consented to by: R. Aubrey Bogley, Attorney for Pennsylvania Railroad and Baltimore & Eastern Railroad Company. (Signed) Alfred L. Bennett, Bernard M. Savage, Attorneys for Brotherhood of Railroad Trainmen.

[fol. 118] I hereby certify that copies of the foregoing Motion for Leave to File Supplemental Brief in the above-entitled cause were mailed, postage prepaid, this 3rd day of January, 1944, to the following attorneys for appellees:

R. Aubrey Bogley, Esquire,
McKenney, Flannery & Fraighill
901 Hibbs Building
Washington, D. C.

Alfred L. Bennett, Esquire
1010 Vermont Avenue
Washington, D. C.

Bernard M. Savage, Esquire
521 Title Building
Baltimore, Maryland

Robert L. Pierce, Esquire
Special Assistant to the Attorney General
Department of Justice
Washington, D. C.

(S.) Rufus G. Poole, Attorney for Appellants, 815
15th Street, N. W., Washington, D. C.

[fol. 119] [Stamp:] United States Court of Appeals for
the District of Columbia. Filed Jan. 28, 1944. Joseph W.
Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA, JANUARY TERM, 1944

No. 8571

ORDER OF RAILWAY CONDUCTORS, et al., Appellants,

vs.

NATIONAL MEDIATION BOARD, et al., Appellees.

ORDER

It is Ordered by the Court that the motions to dismiss
herein be set down for argument, in February.

Printed briefs of the Brotherhood of Railroad Trainmen
and the Pennsylvania Railroad Company in support of their

respective motions to dismiss to be filed on or before February 7, 1944; printed brief of appellants in opposition thereto to be filed on or before February 14, 1944.

Per Curiam.

Dated January 28, 1944.

[fol. 120] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Feb. 17, 1944. Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA

No. 8571

ORDER OF RAILWAY CONDUCTORS OF AMERICA, et al., Appellants

vs.

NATIONAL MEDIATION BOARD, et al., Appellees

STIPULATION

The parties to this case, by their attorneys of record, hereby stipulate that this cause may be heard and determined by two justices of this court.

Dated February 17, 1944:

(Signed) Rufus G. Poole, Attorney for appellants;
Robert L. Pierce, Attorney for Appellee, National
Mediation Board and its members; R. Aubrey Bog-
ley, Attorney for Appellee, Pennsylvania Railroad
Company; Bernard M. Savage, Attorney for Ap-
pellee, Brotherhood of Railroad Trainmen.

[Vol. 121]

Thursday, February 17, 1944.

Before Honorable D. Lawrence Groner, Chief Justice,
and Honorable Justin Miller, Associate Justice:

No. 8571, January Term, 1944

ORDER OF RAILWAY CONDUCTORS OF AMERICA, et al.,
Appellants,

vs.

NATIONAL MEDIATION BOARD, et al., Appellees

Mr. Rufus G. Poole introduced Messrs. William A. Clineburg, a member of the Bar of the Supreme Court of Nebraska, and V. C. Shuttleworth, a member of the Bar of the Supreme Court of Iowa, who were permitted to argue for appellant Order of Railway Conductors of America, pro hac vice by special leave of Court.

Mr. R. Aubrey Bogley introduced Mr. Guy W. Knight, a member of the Bar of the Supreme Court of Pennsylvania, who was permitted to argue for appellee Pennsylvania Railroad, pro hac vice by special leave of Court.

Argument on motions to dismiss commenced by Mr. Robert L. Pierce, for appellee National Mediation Board, continued by Messrs. Guy W. Knight, attorney for appellee Pennsylvania Railroad Company, Bernard M. Savage, attorney for appellee Brotherhood of Railroad Trainmen, William A. Clineburg, attorney for appellant Railway Conductors of America, V. C. Shuttleworth, attorney for appellant Order of Railway Conductors, Guy W. Knight, attorney for appellee Pennsylvania Railroad Company, Bernard M. Savage, attorney for appellee Brotherhood of Railroad Trainmen, and concluded by Mr. William A. Clineburg, attorney for appellant Railway Conductors of America.

[fol. 113] IN UNITED STATES COURT OF APPEALS, DISTRICT
OF COLUMBIA

No. 5571

ORDER OF RAILWAY CONDUCTORS OF AMERICA, ETC., ET AL.,
Appellants,

v.

NATIONAL MEDIATION BOARD, ET AL., Appellees

Appeal from the District Court of the United States for
the District of Columbia

On Motions to Dismiss

Argued February 17, 1944. Decided March 27, 1944

Messrs. William C. Clinchburg, of the Bar of the Supreme Court of Nebraska, and F. C. Shuttleworth, of the Bar of the Supreme Court of Iowa, both *pro hac vice*, by special leave of court, with whom Mr. Rufus G. Poole was on the brief, for appellants.

Mr. Guy W. Knight, of the Bar of the Supreme Court of Pennsylvania, *pro hac vice*, by special leave of court, with whom Mr. R. Aubrey Bogien was on the brief, for appellee Pennsylvania Railroad Company.

Mr. Bernard M. Savage for appellee Brotherhood of Railroad Trainmen. Mr. Alfred E. Bennett also entered an appearance for appellee Brotherhood of Railroad Trainmen.

Mr. Robert L. Parce, Special Assistant to the Attorney General, with whom Mr. Wendell Berg, Assistant Attorney General, was on the brief, for appellees National Mediation Board and its individual members.

Before Groner, C. J., and Miller, J.

PER CURIAM:

This case is here on appeal and arises out of a jurisdictional dispute between the Order of Railway Conductors and the Brotherhood of Railroad Trainmen.

Since 1927 there had been in effect certain jointly negotiated contracts affecting the relationship of the Pennsylvania Railroad and the two unions. In 1941 the Penn-

the contracts, and negotiations were begun to that end. In the middle of 1942 the negotiations were terminated by the Conductors. Thereafter negotiations between the Railroad and Trainmen resulted in a contract affecting what are called assistant conductors and also the circumstances under which the conductors' "extra board" would be maintained. In the late summer of 1942 conferences were resumed between the Railroad and Conductors. The Railroad [Vol. 114] refused to reopen the questions dealt with in its recently made contract with Trainmen, and Conductors again withdrew. Shortly after this Trainmen invoked the Mediation Board's services to hold an election under "2, Ninth of the Act,"* and to certify that organization as the authorized representative of the road conductors on the Pennsylvania. Conductors protested, claiming that the Railroad, with the purpose of having Trainmen substituted for it as bargaining representative, had been guilty of bad faith and coercion, had encouraged Trainmen and its supporters by giving them undue consideration in the settlement of certain back wage claims of its members, and had spread among the employees, including the road conductors, rumors tending to show that Trainmen was an effective organization, alert to the interests of its members, and that Conductors was not, all with the purpose of inducing the conductors to cast their votes at the election in favor of Trainmen as their bargaining representative. Conductors accordingly requested a postponement of the election until an investigation of the charges had been made by the Board. The Board refused the request for postponement, as well as the request that it investigate the charges and insisted it had no jurisdiction therein, except as to coercion, threatened or practised, while an election is in progress. Conductors then began this suit in the District Court against the Railroad and Trainmen, and while it was pending the election was held and as a result Conductors was displaced as the representative of the craft of road conductors in favor of Trainmen. Conductors then, by amended complaint in which it joined the Board as one of the parties defendant, asked the court below to annul and set aside the election and the certification of the Board and to declare

* Railway Labor Act, as amended June 21, 1934, 45 U. S. C. A., Sec. 151, &c.

that Conductors was the proper representative of the conductors' craft, and to direct the Railroad to bargain with it as to working conditions, etc. Conductors further asked the court to enjoin the Railroad from continuing to coerce the conductors in their choice of a representative against a possible future election. The District Court held that Conductors had no cause of action and dismissed the complaint.

The question now before us arises on the motion of the Board, the Trainmen and the Railroad to dismiss the appeal for lack of jurisdiction. We are of opinion the motion must be granted on the authority of the decision of the Supreme Court in *Switchmen's Union v. National Mediation Board*, 320 U. S. 297. In that case the Court held that under the terms of the Act Federal courts lacked jurisdiction to review in any respect the action of the Board in jurisdictional representative disputes. In the later case of *Brotherhood v. United Transport Service Employees*, decided December 6, 1943, the Court went further and extended the prohibition against judicial review to cases in which the action of the Board was said to be clearly arbitrary.

In the present case Conductors had, prior to this controversy, represented road conductors, and Trainmen had represented yard conductors. When the right of the former to continue to represent road conductors was challenged by Trainmen and it was charged that there was collusion between Trainmen and the Railroad, with the purpose of influencing the electors in casting their ballots, we think the Board should have investigated the charge before calling or holding an election. This seems to us to follow from [fol. 115] the provisions of the Section of the Act under which the Board is required to function. The Board's justification that jurisdiction to police the election was confined to the event itself, and not the circumstances leading up to it, does not appeal to us. See *Twins v. N. O. R. R. Co.*, v. *Brotherhood* etc., 281 U. S. 548. But after the election had been held and the majority of the votes had been cast and counted for Trainmen and the Board had certified it as the bargaining representative, the decisions of the Supreme Court in the cases we have referred to, as well as in the *Missouri-Kansas* and *Southern Pacific* cases decided the same day, as we understand their purport, foreclose the question we have here and deprive the courts of all right of interference.

The prayer for injunctive relief against the Railroad, growing out of its alleged policy of coercion, which counsel continue to press, even if it be conceded the District Court has jurisdiction to grant the relief asked, would be bootless in the present situation, since it is not alleged that coercion is continuing now, for the dispute which it is claimed gave it birth is over and done with, the controversy conclusively ended, and put to rest by the Board's certification, and there is no reason to suppose there will be another request for an election. For even greater reason no relief, injunctive or otherwise, can be granted against the Board, for having completed its statutory obligation to conduct an election and make a certification, it is *functus officio* so far as the late controversy is concerned.

Appeal dismissed as to all appellees.

[fol. 124a] [Stamp:] United States Court of Appeals for
the District of Columbia. Filed Mar. 27, 1944. Joseph W.
Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA, JANUARY TERM, 1944

No. 8571

ORDER OF RAILWAY CONDUCTORS OF AMERICA, et al.
Appellants,

vs.

NATIONAL MEDIATION BOARD, et al., Appellees

Appeal from the District Court of the United States for the
District of Columbia

JUDGMENT

This cause came on to be heard on the transcript of the
record from the District Court of the United States for the
District of Columbia, and on a motion to dismiss, and was
argued by counsel.

On consideration whereof, It is now here ordered and ad-
judged by this Court that this appeal be, and it is hereby,
dismissed as to all appellees; each party to bear its own
costs.

Per curiam.

Dated March 27, 1944.

A true Copy. Test:

Joseph W. Stewart, Clerk of the United States
Court of Appeals for the District of Columbia.
(Seal.)

[fol. 125] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Apr. 14, 1944. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 8571

ORDER OF RAILWAY CONDUCTORS, et al., Appellants,

NATIONAL MEDIATION BOARD, et al., Appellees

DESIGNATION OF RECORD

The Clerk will please prepare a certified transcript of proceedings in the above-entitled cause for use in connection with the Petition for Writ of Certiorari in the Supreme Court of the United States, and include therein the following:

- (1) Appendix to Appellants' Brief.
- (2) Motion to Dismiss Appeal as to Mediation Board and its Members for Lack of Jurisdiction.
- (3) Motion by Appellants for Leave to File Answer to the Motion to Dismiss Appeal as to the Mediation Board and its Members.
- (4) Motion to Dismiss Appeal as to the Pennsylvania Railroad Company for Lack of Jurisdiction.
- (5) Answer to Motion to Dismiss Appeal as to the Pennsylvania Railroad Company.
- (6) Motion to Dismiss Appeal as to Brotherhood of Railroad Trainmen for Lack of Jurisdiction.
- (7) Answer to Motion to Dismiss Appeal as to Brotherhood of Railroad Trainmen.
- [fol. 126] (8) Appellants' Motion for Leave to File Supplemental Brief.
- (9) Order of the United States Court of Appeals setting down for argument the Motions to Dismiss and requiring the filing of briefs thereon.
- (10) Minute Entry of Argument.
- (11) Opinion of Court on Motion to Dismiss and Order Dismissing Appeal as to all Appellees.

(12) This Designation of Record.

(13) Clerk's Certification.

(S.) Rufus G. Poole, William A. Clineburg, 815 15th Street; N. W., Washington, D. C.; (S.) V. C. Shuttleworth, Merchants National Bank Bldg., Cedar Rapids, Iowa, Attorneys for Appellants.

[fol. 127] I hereby certify that copies of the foregoing Designation of Record in the above-entitled cause were mailed, postage prepaid, this 15th day of April, 1944, to the following attorneys for appellees:

Robert L. Pierce, Esquire, Special Assistant to the Attorney General, Department of Justice, Washington, D. C., Attorney for Appellee National Mediation Board and its Members;

R. Aubrey Bogley, Esquire, 901 Hibbs Building, Washington, D. C., Attorney for Appellee The Pennsylvania Railroad Co.;

Alfred L. Bennett, Esquire, 507 Denrike Building, Washington, D. C., Attorney for Brotherhood of Railroad Trainmen.

(S.) Rufus G. Poole, Attorney for Appellants, 815 15th Street, N. W., Washington, D. C.

[fol. 128] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered from 1 to 127, both inclusive, constitute a true copy of the appendices to the briefs of the parties and the proceedings of the said Court of Appeals as designated by counsel for appellants in the case of: Order of Railway Conductors of America, et al., Appellants, vs. National Mediation Board, et al., Appellees, No. 8571, January Term, 1944, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this fourth day of May, A. D. 1944.

Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia. (Seal.)

[fol. 119] IN THE SUPREME COURT OF THE UNITED STATES
 STIPULATION CONCERNING ADDITIONS TO PRINTED RECORD—
 Filed Oct. 18, 1944.

It is hereby stipulated and agreed by and between counsel for the respective parties hereto that there shall be printed and added to the printed record now before the Court the following:

1. Exhibit "B" to the complaint in the District Court of the United States for the District of Columbia, consisting of letter dated August 3, 1942, addressed to W. C. Higginbottom and others signed by J. E. Magill, General Chairman, Pennsylvania Lines East, and C. E. Kalkman, General Chairman, Pennsylvania Lines West, General Committee of Adjustment, Order of Railway Conductors;

2. Exhibit "C" to said complaint, consisting of further letter dated August 3, 1942, addressed to W. C. Higginbottom and others by said J. E. Magill and C. E. Kalkman; and

3. Page 11 of Exhibit "A" to said complaint, said Exhibit being entitled "Schedule of Regulations and Rates of Pay for the Government of Conductors, Trainmen and Switch-Tenders in Road and Yard Service," said page 11 thereof consisting of a schedule of rates of pay for passenger service.

[fol. 120] For more accurate identification, copies of said Exhibit "B" and "C" to said complaint and of Page 11 of said Exhibit "A" to said complaint are hereto attached.

Rufus A. Poole, William A. Clineburg, Attorneys for petitioner; John Dickinson, John B. Prizer, B. Aubrey Bogley, Attorneys for respondent, The Pennsylvania Railroad Company; Bernard M. Savage, Attorneys for respondent, Brotherhood of Railroad Trainmen.

[fol. 121]

EXHIBIT "B"

General Committee of Adjustment

Office of Chairman, 1930 City Centre Building, Philadelphia, Pa.

Order of Railway Conductors

The Pennsylvania Railroad (Former Lines East)

August 3, 1942

Mr. W. C. Higginbottom, General Manager, Eastern Region, P. R. R., 30th Street Station Building, Philadelphia, Pa.

Mr. J. C. White, General Manager, Central Region, P. R. R., Pennsylvania Station, Pittsburgh, Pa.

Mr. H. F. Sites, General Chairman, Brotherhood of Railroad Trainmen, Pennsylvania Lines East, 611 City Centre Building, Philadelphia, Pa.

Mr. H. L. Nauncarrow, General Manager, Western Region, P. R. R., 514 Union Station, Chicago, Illinois.

Mr. J. A. Appleton, General Manager, New York Zone, P. R. R., Pennsylvania Station, New York City, N. Y.

Mr. U. D. Hartman, General Chairman, Brotherhood of Railroad Trainmen, Pennsylvania Lines West, 428 Medical Arts Building, Richmond, Indiana.

GENTLEMEN:

Under date of April 18, 1941, the Management of the Pennsylvania Railroad addressed a notice to the General Chairmen of the Order of Railway Conductors and the General Chairmen of the Brotherhood of Railroad Trainmen of their desire to revise certain Schedule Rules.

Subsequent to receipt of the above referred to notice several joint conferences have been held with the Management of the Pennsylvania Railroad and the Committees of both the Order of Railway Conductors and the Brotherhood of Railroad Trainmen.

Some progress was made regarding some of the rule changes, however, on or about July 24, 1942 the Order of Railway Conductors' Committee was confronted with objections on the part of the Brotherhood of Railroad Trainmen's Committee regarding rules proposed by the Order of

Railway Conductors' Committee, that affected Conductors only.

In view of the position taken by the Brotherhood of Railroad Trainmen's Committee regarding Conductors' rules, the undersigned desire to withdraw from the present joint negotiations with the Brotherhood of Railroad Trainmen's Committee with respect to rule changes, and submit the following notice:

This is to advise that the employees of the Pennsylvania Railroad System engaged as Passenger and Freight Conductors, regular and extra, represented and legislated for by the Order of Railway Conductors of America have approved the presentation of request for a separation of [fol. 122] Schedule and/or Agreements from the present so called joint Schedule and/or joint Agreements.

According to the terms of our present Schedule and/or Agreements, and in conformity with the provisions of the Railway Labor Act, kindly accept this as the required official notice of our desire to separate the present joint Schedule and Agreements.

Please acknowledge receipt.

Very truly yours, (Signed) J. E. Magill, General Chairman, Penna. Lines East; C. E. Kalkman, General Chairman, Penna. Lines West.

[fol. 123]

EXHIBIT "C"

General Committee of Adjustment

Order of Railway Conductors

The Pennsylvania Railroad

(Former Lines East)

Office of Chairman, 1039 City Centre Building, Philadelphia, Pa.

August 3, 1942.

Mr. W. C. Higginbottom, General Manager, Eastern Region, P. R. R., 30th Street Station Building, Philadelphia, Pa.

Mr. J. C. White, General Manager, Central Region, P. R. R., Pennsylvania Station, Pittsburgh, Pa.

Mr. H. L. Nancarrow, General Manager, Western Region,
 P. R. R., 514 Union Station, Chicago, Ill.
 Mr. J. A. Appleton, General Manager, New York Zone,
 P. R. R., Pennsylvania Station, New York City, N. Y.

GENTLEMEN:

In order that you may have a clear understanding of our position in connection with the separation of the joint Schedule (notice of which was served this morning) and what we contend are some of the contractual rights of the Order of Railway Conductors which is the duly recognized Railway Labor Organization that represents and legislates for the Passenger and Road Freight Conductors, regular and extra, on the Pennsylvania Railroad we submit the following:

We know that certain infringements upon Conductors' service rights have taken place on your Railroad especially in passenger service. It must be understood that no work belonging to the class of employes we represent can be legislated for by anyone other than the Order of Railway Conductors.

It must also be understood that no one other than the Order of Railway Conductors' Committee has the right to legislate for the establishment of and the regulation of Conductors' positions, regular and extra.

With respect to carrying on negotiations in connection with your notice of April 18, 1941, on the basis of a separate Schedule, if agreeable we will submit to you for your consideration such rule changes as we desire and offer counter proposals to the rule changes mentioned in your notice of April 18, 1941.

Very truly yours, (Signed) C. E. Kalkman, General Chairman, Penna. Lines West.

(Signed) J. E. Magill, General Chairman, Penna. Lines

APPENDIX

Page 14 of contract between Penn. R.R., BRT and ORC.
effective April 1, 1927, (ORC Exhibit "A").

THE PENNSYLVANIA RAILROAD

EXCLUDING

OHIO RIVER & WESTERN RAILWAY
WAYNESBURG AND WASHINGTON RAILROAD

SCHEDULE OF REGULATIONS AND RATES OF PAY
FOR THE
GOVERNMENT OF CONDUCTORS, TRAINMEN AND SWITCH-
TENDERS IN ROAD AND YARD SERVICE

PASSENGER SERVICE

P. A. C. Rates for passenger service shall be as follows: Basic Rates

CLASS	Rate Per Mile	Rate Per Day	Rate Per Month	Regular and Overtime Hourly Rate
Conductors				
Conductors handling express	4 80	\$7 20	\$216 00	8 90
Conductors handling Government mail	5 03	7 54	216 00	9425
Conductors handling Government mail and express	(b) 5 03	(b) 7 54	(b) 216 00	(b) 9425
Assistant Conductors or Ticket Collectors	(b) 5 25	(b) 7 88	(b) 216 00	(b) 985
Assistant Conductors or Ticket Collectors handling Government mail and express	(a) 3 94	(a) 5 91	(a) 177 30	(a) 74
Baggagemen handling express, dynamo and Government mail	(b) 4 17	(b) 6 25	(b) 177 30	(b) 7825
Baggagemen handling dynamo and express	(b) 4 39	(b) 6 59	(b) 177 30	(b) 825
Baggagemen handling dynamo and express and Government mail	(a) 3 43	(a) 5 90	(a) 177 00	(a) 7375
Baggagemen handling either dynamo or express	(b) 4 16	(b) 6 24	(b) 187 20	(b) 78
Brakemen	3 93	5 90	177 00	7375
Brakemen handling Government mail	(a) 3 71	(a) 5 56	(a) 166 80	(a) 695
Brakemen handling Government mail and express	(b) 3 93	(b) 5 90	(b) 177 00	(b) 7375
Brakemen handling Government mail	3 71	5 56	166 80	695
Brakemen	(c) 3 48	(a) 5 22	(a) 156 60	(a) 6525
Brakemen	(b) 3 71	(b) 5 56	(b) 166 80	(b) 695
Brakemen	3 48	5 22	156 60	6525
Brakemen	3 37	5 05	151 50	6325
Brakemen	(c) 3 59	(c) 5 39	(c) 151 50	(c) 675

(a) Applies when amount of United States mail handled between any two points does not exceed in volume the minimum space that can be authorized by the Post Office Department, viz.: 3 feet or its equivalent, 54 sacks or pieces.

(b) Applies when amount of United States mail handled between any two points exceeds in volume the minimum space that can be authorized by the Post Office Department, viz.: 3 feet or its equivalent, 54 sacks or pieces.

***** Loading United States mail into car, storing into car, sorting it enroute, or unloading it at intermediate or terminal points will constitute 'handling' under this rule. The extra allowance for handling United States mail will not apply when 'storage' mail is in charge of the baggageman, provided he is not required to 'handle' it.

(c) The extra allowances for handling dynamo, express and/or United States mail by train baggagemen will apply to other trainmen who may be assigned regularly or temporarily to that work.

[fol. 125] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1944

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 48,653. U. S. Court of Appeals, District of Columbia. Term No. 200. Order of Railway Conductors of America, H. W. Fraser, as President of the Order of Railway Conductors of America, etc., et al. Petitioners, vs. The Pennsylvania Railroad Company and Brotherhood of Railroad Trainmen. Petition for a writ of certiorari and exhibit thereto. Filed June 26, 1944. Term No. 200 O. T. 1944.

(4571)

